Anita Abraham

Formation and Management of

NGOs

Non Governmental Organisations



Fourth Edition

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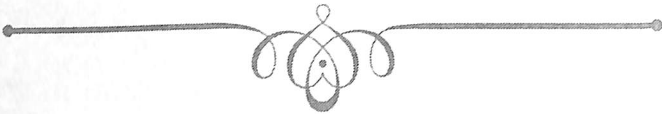
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Justice V R Krishna Iyer
Random Reflections, page 14



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ANITA ABRAHAM
ADVOCATE

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PREFACE

In a country where Mother Teresa and Gautama Buddha found fame for their humanness and charitable deeds, this book is a further dedication to the work of countless do-gooders who strive to make this world a better place.

The need for a composite, under-one-umbrella book on the Formation and Management of NGOs in India was keenly felt, when a methodical search of bookshelves in the Capital's popular bookshops offered only individual booklets on Societies, Trusts and Non-Profit Companies, besides gigantic, voluminous compilations on NGO directories and cross references.

Questions such as "What law is a volunteer covered under?", "What is the nature and extent of a volunteer's legal duties/code of practice ?", "Is an NGO health care worker bound by law to keep a patient's health records confidential?", "How can I start an NGO and receive foreign funds for activities in India?" "Can I effectively sue an NGO in India?" that crop up out of practical necessity require reference to several books to conclude a legally safe affirmation or negation. It is to stem this multiplicity of effort at legal research that this present work aims at, apart from addressing practical three-dimensional questions.

Besides narrating the law and the mandatory discussion on how to form and manage a society, a trust and a non-profit company and legal issues of registration, taxation of NGO income, this book provides legal discussion on the avenues of NGO work ranging from aged care to child care, women's issues, disaster management, agriculture and environment. Each avenue of NGO work further outlines the scope and nature of work involved with specific reference to the number and type of laws the NGO worker is likely to tangle or deal with. Thus for an NGO which sets out to work with children, this book provides a ready reference to the numerous Indian laws relating to child welfare (adoption, sexual exploitation, child labour, child trafficking, discrimination of girl child, education, and like issues).

Chapter on 'Indian Laws and NGOs' is personally recommended by me, since it provides the reader an overview of general laws *vis-à-vis* the scope of NGO work in the relevant area. It is heartening to note that the law provides that even lawyers are required to put away several man-hours for legal aid and public spirited activities! (Refer Advocates Act, 1961 that prescribes methods for lawyers to inculcate, promote and regulate voluntary legal activity in India).

While all effort has been made to present a comprehensive book on the A-Z of the formation and management of an Indian NGO in a reader-friendly manner – constructive criticism is welcome.

Thanks to Mr. Manish Arora, who persists in motivating me to scale New Greater Opportunities (NGOs) and professional heights.

ANITA ABRAHAM

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Part A
Introduction

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NON-GOVERNMENTAL ORGANISATIONS

This peculiar type of organisation is not a part of any Government and not a conventional for-profit business entity. It is set up by ordinary citizens who are aware of rights of human beings and animals. This type of organisations can be funded by Government Departments, or by business houses and sometimes by volunteers.

These organisations are diversified groups and are always engaged with vast and wide range of activities. Some of these run with the charitable trusts and others are registered for the purpose of tax exemption benefits in the right of service for the purpose of social activities in wide range. Besides, other organisations of same nature belong to religious, political or other interest stratas.

India at this age of 2nd decade of 21st Century has recorded about 2.25 million NGOs. These NGOs deal with many activities, hence, it is difficult to denote this term in one complete set up because it depends upon their motto of "Social Orientation" and their level and way of operations. These operations encompass upon human rights, right to environment and other specific work for development of society for which they deal *vide* local, regional, international including domestic or national.

Going back to the year 1945, the year which came after two world wars and a remarkable year particularly after second world war ended in 1944 while the inter-governmental organisation the United Nations Organisation was conceived and from its very conception India is a member even before two years of its independence. This UNO facilitated the NGOs which were then called *"Non-State Agencies"*. And also many socially awarded civilians of member countries of UNO defined NGOs as "any private organisations which are independent from the control of Governments if these organisations are non-profit and non-criminal, non-commercial and not as opposition parties of politically administrative Government in any Parliament or State Assemblies."

Easy Understanding of NGOs

This table represents two types of functionings/operations:

Level of Operation	Level of Orientation
1. Community-based Organisations (CBOs): born from people's own initiatives for helping rights of people for need based services.	1. Charitable Orientation: born to meet the needs of poor strata of population with little participation with beneficiaries.
2. City-wide Organisations (CWOs): born to alienating of business, ethic or educational groups and community-associated groups *i.e.*, Chamber of Commerce and Industry.	2. Participatory Orientation: born to implement the projects with contributory cash, land infrastructure and other specific materials and labour. It is otherwise characterised by self-help projects with the help of local population.
3. International NGOs: born for funding local NGOs, institutions and various projects *i.e.*, CARE, OXFAM, FORD Foundation ROCKEFELLER and including religious organisations.	3. Service Orientation: born to give socially needful service *i.e.*, health, family planning, education with a small people participation.
4. National NGOs: born to provide service to both social and religious organisations *i.e.*, Red Cross, YMCA/YWCAs, Professional Associations.	4. Empowering Orientation: born to develop the conditions of poor in social, economic and political areas by which they are badly affected.

Besides these there are also other forms of NGOs *viz.* Third Sector Organisations (TSOs), Non-profit Organisations (NPOs), Voluntary Organisations (VOs), Civil Society Organisations (CSOs), Grass Root Organisations (GROs), Social Movement Organisations (SMOs), Private Voluntary Organisations (PVOs), Self-help Organisations (SHOs) and Non-State Actors (NSAs).



2

Non-Governmental Organisations—One Stop Shop for Human Rights

Recall the face of the poorest and the weakest man whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him.

—Mahatma Gandhi

Concept of Rights

The "human rights" are moral inalienable rights which are based on human life as their basic rights and not an animal existence which are protected both at national and international level and law. A citizen is *inherently entitled* to such right because he is born in a society not in a jungle as an animal. The policies of the concerned country and the helping activities of Non-Governmental Organisations (NGOs) influence such rights in the line of *human dignity and equity*. The first line of Universal Declaration of Human Rights *UNDHR* spells "All human beings are born free and equal in dignity and rights."

Human beings are born with some rights, demand some rights and get some rights. An NGO participates in the recognition, enforcement and regulation of rights of human beings. The human rights are of three generation rights or three degrees of rights. The *first*-generation rights are civil and political rights, the *second*-generation rights are economic, social and cultural rights and the *third*-generation rights which are otherwise called solidarity rights. These rights include:

Civil and Political Rights – Rights to life, liberty, free speech, movement, political thought, religious practice, fair trial, privacy, to raise a family, to vote.

Economic, Social and Cultural Rights – Adequate food and water, health care, education, respect for cultural practices, welfare assistance.

Solidarity Rights – Peace, and clean environment.

Humanitarian Rights – Rights of those who are, affected by armed conflict, prisoners of war, wounded, women and children for necessary care and treatment.

Specific Rights – Workers' rights, women's rights, children's rights, rights of minority groups, refugees and disabled.

Non-Governmental Organisations[1]

The word **NGO** is an abbreviation of Non-Governmental Organisation. Any organisation working for a social, cultural, economic, educational or religious cause is termed as an NGO. An NGO can be formed under various legal identities:

1. **Limited company** incorporated under section 8 of the Companies Act, 2013.

2. **Society** registered under Societies Registration Act, 1860.

3. **Trust** formed under a Trust deed and registered with Income Tax Act, 1961. There is no All India Act for setting up Public Trust. Some States have enacted their Public Charitable Trust Acts. The NGOs are registered under these Acts.

4. **Private Trust** governed by the Indian Trusts Act, 1882. The NGOs formed and registered under this Central Act do not enjoy the privileges and tax benefits.

5. **Non-Profit Companies** promote cultural and charitable objectives, but exempting them from the operation of some cumbersome requirements which are essentially for regulation of business bodies but are difficult for compliance by non-profit companies, and are the noteworthy features which are provided under the Companies Act, 2013.

NGOs in India

NGOs have reached out to all sections of the society including women, children, pavement dwellers, unorganised workers, youth, slum-dwellers and landless labourers. NGOs are viewed as vehicles of legitimisation of civil society. By giving legal implementation to our rights of freedom of expression and freedom of association, laws permitting the establishment and regulating the operation of NGOs create strong support for democracy in India.

Trend in NGO mission statement : There is a perceptible shift from reactive reforms and aid to pro-active reforms and aid. The underlying chorus has changed from 'scavenge and clean up' position to 'don't make a mess in the first place' one. *Sustainable Development* is the new NGO lingo - the term 'sustainable development', defined in the report of the World Commission for Environment and Development (Brundtland report) describes the term as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".

NGOs reiterate the need for increased allocation and disbursement of resources to the social sectors. An increase in spending on the social sectors must be coupled with determined efforts to ensure quality of public spending.

Constitution of India and NGOs : An Indian NGOs' source Code is the Constitution of India, which intrinsically protects all human rights of all kinds. NGOs style their objectives along the Rights and Duties laid out in the

1. Non-Governmental Organisation, Social Service Organisation, Voluntary Organisation, Non-profit Organisation all are synonymous, meaning a body which renders a non-profit service to the society.

Constitution, which prescribes Fundamental Rights such as equality before the law, freedom from discrimination on grounds of religion, race, caste, sex or place of birth, equality of opportunity in matters of public employment, freedom of speech and expression, right to assemble peacefully without arms, to form association or unions, to move freely throughout India, to reside and settle in any part of India, protection against deprivation of life and personal liberty, freedom of conscience and the profession, practice and propagation of religion. Additionally, Fundamental Duties include a duty to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem, to preserve our culture, protect national environment including forests, lakes, rivers and wild life and to have compassion for living creatures and to strive towards excellence in all spheres of individual and collective activity.

User-friendly NGO

An NGO which has the following features is effective in achieving its objectives and long-term goals:

(1) Flexibility to modify objects and activities considering the fluctuating needs and circumstances of people;

(2) Certainty as to legal status and consequent adequate legal protection in international transactions;

(3) Effective prevention of take-overs.

NGO Accountability: There is ample legislation to hold NGOs accountable for financial or other wrongdoings. The Indian regulatory and criminal justice procedures provide sufficient institutional checks to ensure or correct the deeds and mis-deeds of an NGO. While strict and rigid financial reporting requirements for the NGOs serve legitimate governmental interests. However, politically disfavoured NGOs are sometimes harassed by heavy handed use of Foreign Contribution and Regulation Act provisions to restrict their legitimate practices.

Take the first step to work for a social cause *i.e.* commitment. The rest of the maze commencing from the intention to help, to a translation of your charitable thoughts to reality is a path already mapped out for you to simply follow by thousands of do-gooders. Here is one way of going about the NGO maze.

Identify Target Groups/issues and Information gathering is the first step for you – discuss, read, surf the web, meet NGO workers – do your background research to get a feel of the nature and quantum of effort your social service intentions will require of you. Work for a cause which is close to your heart, you get to choose.



Get yourself a team : Get like minded people who can commit their time and effort in coordinating the social cause.



***Give your worthy cause a name and get it registered*:** Work out your plan of action which can be in the form of a Memorandum of Association for a society or a trust deed and get the documents registered after naming your mission. Registration opens the doors to certain statutory benefits for your cause.



***Roll up your sleeves and get to work*:** Be it chasing stray dogs and rounding them up for medical care or telling people to halt with one child, cleaning up places and people – making the world a better place is in your hands.



Part B

Formation of an NGO in India

WE HELP PEOPLE START FROM SCRATCH



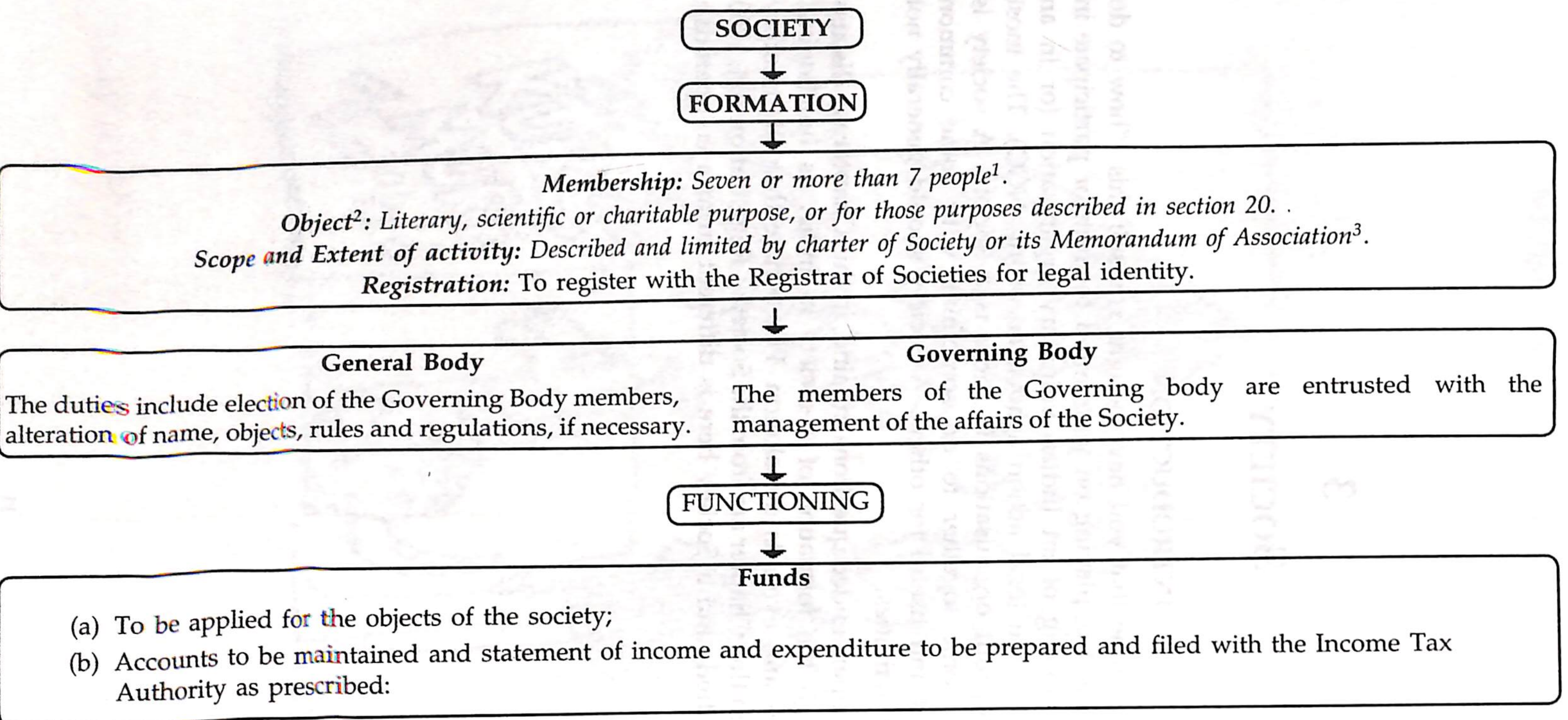
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SOCIETY

INTRODUCTION

At this stage, we presume that you have bought yourself this "how to do it" tool on NGOs since it is playing on your mind to form or participate in the formation or functioning of an Indian voluntary organisation (or in an unfortunate scenario to take legal action against an erring NGO). The most common form of non-profit organisations in India is a Society. A society is formed when people come together to do something with some common purpose which is legal and useful for others. A Society should generally not get into profit-making activities.

Keeping a layman's open–ended questions in mind, in this Chapter we discuss and guide you through the formation of a society in India, its functioning, regulatory compliances and even its dissolution. Please note that all statutory provisions referred to in this Chapter are from the Societies Registration Act, 1860 unless otherwise specified, and a Society here is different from a co-operative society.



1. Even a foreigner can be a member of a society in India – but please note that the Indian Act (Societies Registration Act), will govern the said Society.
2. The Gujarat (Amendment) Act has included sports also an objective of a society; Delhi (Amendment) Act has included promotion of social welfare, compassion for living creatures, fine arts as additional objectives.
3. Charter of the society is a legal document spelling out the scope and extent of the society's activities, the scope and extent of the Governing Body's rights and duties, manner of raising (and receiving) funds, grant and aid, etc.

FILING OF DOCUMENTS

A. For registration

(i) Signed Application of request by subscribers for registration (under the Act) of Society.
(ii) Memorandum of Association.
(iii) Rules and Regulations.
(iv) Affidavit of President stating relationship of subscribers.
(v) Proof of registered office premises.

B. For Income tax purpose

(i) Certificate of registration.
(ii) Statement of accounts, certificate of Chartered Accountant.

C. Section 4 requirement

(i) to file list of names, addresses, occupations of the members of the Governing Body once a year with the Registrar.

Some Offences	Penalties
Non-filing of names, addresses and occupation of Governors, Council, Directors, Committee entrusted with management of the Society.	President, secretary or other person authorised by Governing Body is liable to pay Fine upto Rs. 500 and Rs. 50 per day for continuing offence.[1]
Wilfully furnishing any false information or return.	An authorised officer is liable to pay fine upto Rs. 200.
[2]Refusing or neglecting to send audited income and expenditure statement and information.	The Society or person so authorised is liable to pay a fine of upto Rs. 20.[3]

1. In terms of the Assam Act VII of 1957.
2. In terms of the Gujarat Act 17 of 1978.
3. In terms of the Madhya Pradesh Societies Registration Act, 1973.

A. FORMATION OF A SOCIETY

FIRST STEP

Seven persons enjoin for a common purpose

The first step in forming a society requires the coming together of seven (or more) persons who have agreed to pursue a common objective. Please note that the seven members or more maybe comprised of one or all foreigners[1], a limited company[2], a partnership firm or another registered society[3]. The pursuit of an identical mission is the relevant common feature associated with the seven persons who have enjoined to form the society. Section 1 of the Societies Registration Act, 1860 defines "Society" as an association of seven or more persons who have come together for any literary, scientific or charitable purpose, (or those purposes enumerated in section 20 of same Act) by subscribing their names to a Memorandum of Association, and filing it with the Registrar of Joint Stock Companies. (Refer Appendix on the Societies Registration Act, 1860). A person can be a member of Society if he:—

1. has been admitted therein according to the Rules and Regulations, and
2. has paid a subscription or has signed the roll or list of members, and
3. has not resigned from the Society.

SECOND STEP

Society's Objective to be literary, scientific or charitable

The very nature of a society is characterised by its noble mission statements which involve the promotion of literary, scientific or charitable purposes. Seven or more persons can get together under the legal umbrella of a society only for promotion of these aforesaid objectives and those enumerated under section 20, and for no other primary motive (this is of course where the society is to be a registered society under the Act, 1860).

Section 20 of the 1860 Act enumerates the following purposes[4] for which a society may be registered under the Act.

(i) charitable societies

(ii) creation of military orphan funds

(iii) societies established at the General Presidencies of India for promotion of science, literature, fine arts, instructions or diffusion of useful knowledge, diffusion of political education, foundation or maintenance of libraries or reading rooms, public museum and galleries of paintings,

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1. Indian law will apply in all cases where the society is registered in India and even if all members of the society are foreigners.
2. A limited company is a legal entity and can become a member through its constituted attorney.
3. A registered society is a legal entity and can subscribe to the Memorandum of a proposed society through its constituted attorney.
4. Objects in the Madhya Pradesh Act include—Promotion of science, education, social welfare, welfare of political sufferers, promotion of gymnastics etc. Objects of the Karnataka Act include instruction and diffusion of knowledge relating to commerce or industry, promotion of sports, etc.

works of art, collections of natural history, mechanical and philosophical inventions, instruments and Designs.

"Charitable purpose[1]" explained: A plethora of case law precedents of the various courts have examined what is and what is not an objective of "charitable nature". The case of *Commissioner for Special Purposes of Income Tax* v. *John Fredrick Pemsel*[2], outlined 4 heads of charitable purposes *viz.*: (i) for the relief of poverty; (ii) for the advancement of education; (iii) for the advancement of religion; and (iv) for other purposes beneficial to the community not falling under any of the preceding heads. The public nature of the charitable purpose is necessary for legal recognition *i.e.* the benefit should be for the public and not for personal benefit. (For further discussion on charitable purpose, refer Chapter on Trust)

Education as "charitable purpose": Where the main object of the registered society was to extend financial assistance to poor and deserving students of the *Saraswath* community by way of loans, scholarships and grants for purchase of books or other educational requisites, it was held that the Society's activities fell in ambit of "charitable purpose"[3](as contemplated in section 2(15)[4] of the Income-Tax Act, 1961 and the society was entitled to exemption under section 11 thereof). Please note that it is not necessary that the charitable purpose benefits the whole world or the country, if it benefits a section of the community it is sufficient for the purpose of qualifying its activities as charitable purposes.

THIRD STEP

Naming the society

The christening of the society is not as intricate and ceremonious as that of a company incorporated under the Companies Act, 1956. The members can arrive at a suitable name which gives a clue as to the character of the society, which does not amount to an improper use of any name, emblem, official seal specified in the Emblems and Names (Prevention of Misuse) Act, 1950, does not offend or mislead people, which is not the name of a society already existing. The registrar will object to names containing words like government, ministry, bank, suggesting involvement with the government, which is not allowed. The name of a society can also end with the word "Trust".

FOURTH STEP

Drafting the Memorandum of Association and enrolment of members

The Memorandum of Association ("MOA") is perhaps the most important document of a registered Society since it contains the conditions of association of the members and its Objects Clause dictates what can be and cannot be done

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1. Philanthropy, altruism, humanitarianism are similar concepts.
2. 1891 AC 531.
3. *Commissioner of Income Tax, Karnataka II, Bangalore* v. *Saraswath Poor Students Fund*, (1984) 150 ITR 142.
4. "Education" as contemplated in section 2(15) is the systematic instruction, schooling or training given to the young in preparation for life. It cannot be used in a wide sense to include every acquisition of further knowledge.

by the members of the Society. As a charter of the Society it should ideally include the following details:

1. Name of the society.
2. Object of the society.
3. Details of the governing body – (The name, address and occupation of the governors, council, directors, committee or other governing body to whom management of affairs is entrusted).
4. Names, addresses and signatures (witnessed and attested) of the seven or more subscribers to the memorandum.

Features of the MOA: (a) It defines as well as confines the powers of the Society; (b) It defines the relationship of the Society with its members and as well as with strangers; (c) Activities of the society are delimited by its MOA and if a society does something which does not fall within the ambit of the prescribed activities outlined in the MOA[1], then that activity will be *ultra vires*[2].

Objects Clause – Objects clause is mandatory in a MOA and is to be carefully drafted, since it prescribes what the members have agreed that the society can do, cannot do, will do, will not do as a registered society. By laying out a detailed Objects Clause there is little or no scope for the society to indulge in job-hopping, or vary its activities with no rhyme or reason. Any action taken beyond the scope of the Objects Clause would be *ultra vires* and the court may regard a certain action of the society as a nullity. For example your organisation proceeds to build a night–shelter for homeless rickshaw pullers and with all noble intentions, considerable time and money have been invested in this charitable activity. In the event the MOA of your society does not permit you to build such a shelter then you are in a situation which is quite ironical – you can be called upon to repay all the money invested in the *ultra vires* act; none of the members can be of help even if they accord their approval to such *ultra vires* act and you are not even allowed to possess legal title to the shelter. Model Objects for Society for Welfare of Handicapped Persons, Hospital and educational Society have been provided at Appendices III, V and VI.

Rules & Regulations (Bye-laws): While the MOA lays down the broad sphere of activity, the Society's Rules regulate the functions and conduct of its officials; internal management of the organisation – it serves as a comprehensive list of the Do's and Don'ts for the management of the society. An act which is not allowed by the Rules can be ratified by the members of the society. However, a society can be hauled up for 'mismanagement' if it regularly does not follow the By-laws provided for the conduct of its affairs. Where a conflict of provisions arises in the bye-laws *vis-à-vis* the MOA, the MOA will prevail. The Act has not prescribed a standardised set of Rules, regulations and bye-laws – nevertheless, it is important to document certain essentials as provided hereunder:

The Rules and regulations of a society include provisions:

---

1. Where certain clauses of an MOA are against the Act, it is a settled position that the relevant provisions of the Act will prevail and is to be followed by the society.
2. *Ultra vires* means 'beyond the power'.

Regarding appointments, removal and penalties:

(a) Conditions for admission for its members;

(b) Liability of members for fines under specified circumstances;

(c) Outline of consequences for non-payment and or late payment of subscription fees;

(d) Appointment and removal of governing body;

Regarding Meetings:

(e) Manner of giving notice of meetings;

(f) Quorum necessary for meetings;

(g) Manner of making, altering and rescinding regulations;

Regarding Funds and accounts thereof:

(h) Investment of funds;

(i) Keeping of accounts, periodical audit of accounts;

Regarding Dissolution:

(j) Manner of dissolution;

(k) Utilisation of property by Government or others upon dissolution;

The Bye-laws can provide for the following:

Regarding activity of the society:

(i) Business hours of the society;

(ii) Activities with regard to the Objects of the society;

Regarding role of authorised Officers:

(iii) Name of officer authorised to sue or be sued on behalf of the society;

(iv) Name of officer authorised to give directions for the business;

Regarding Members:

(v) Qualification for membership, Rights of members;

(vi) Funds for dependent of deceased or disabled member;

Regarding conduct of business:

(vii) Hiring of staff, conditions of employment;

(viii) Annual general meetings;

(ix) Extraordinary general meetings;

Regarding Documents:

(x) Preparation and filing of the records and statements from time to time with the Registrar;

(xi) Supply of copies of bye-laws, balance sheet, to the members on application and fees;

(xii) Exhibition of the register of members, minutes book and accounts book for inspection by members.

Is a society a body corporate?

A society may appear to be a body corporate on account of its legal identity separate from that of its members and capability to sue and be sued in its name; however a society is still not a body corporate.

Enrolment of Members: Individuals who are competent to contract can become members[1]. Moral character can be an additional pre-requisite for some societies. Most societies reserve the right to admit members. Generally, the Governing Body has the power to admit members.

General Body: A society has two 'bodies'—General Body and Governing Body. All the members of the society together comprise the General Body. The duties of the General Body include election of the Governing Body members, alteration of name, objects, rules and regulations if necessary. Usually, where the members of the General Body are seven or eight in number, these members are also elected as members of the Governing Body. It is necessary to obtain the consent of the General Body before dissolution of the society.

Governing Body: The members of the Governing body are the officials of the society to whom has been entrusted the management of the affairs of the society. The Governor, Council Directors, Committee, Trustees are common nomenclature for the members of the Governing Body.

Voting Rights

According to the Act, a person is a member if he or she:

1. Has been admitted to membership;
2. Has paid the dues or signed the members' register;
3. Has not resigned.

This means that all members have equal voting rights. They all have an equal say in elections, dissolution and other matters.

Disqualification

The Society norms generally provide that if a member's subscription is overdue for more than three months, the member is automatically disqualified. This means he or she cannot vote or be counted as a member.

Removing members: Procedure for removal of members is given in the bye-laws. Principles of natural justice should also be followed. Normally, this means that the member is given a show-cause notice and his reply is also considered. A decision about the removal should be taken after this. Members can be removed for not paying annual dues. Other grounds for removal can be for not attending Annual General Meetings, conviction for a moral or criminal offence, or activities against the society.

Membership fees: (Admission fee and annual fee)—As discussed earlier, if membership fees are not paid, a member may be disqualified. Maintaining a

1. ***Types of members***: These could be founder members, associate members, honorary members, normal members, etc., with different rights and duties provided by the Society's Bye-laws.

register for this purpose is advisable and a receipt should always be issued when the dues are received.

FIFTH STEP

Registration of your society

The registration of a society is important to give the society a legitimate identity and a legal status and particularly more so when viewed from the consequences and benefits which flow from such fulfilling the legal formality of registration of the society. Please refer Chapter on "Registration" for a detailed discussion on the modalities, benefits and all aspects of registration.

Other important features of a registered society

Court(ing) the Society: The court interferes only to prevent unfairness or oppression and to ensure *bona fide* exercise of power. If the majority abuses the powers vested in them and thereby deprives the minority of their rights, the aggrieved minority may sue the society. If the object of an action is not within the objects in the Memorandum of Association then the court can quash such an action. However, please note that the acts of the majority is binding on the society when the Rules of the society have provided accordingly[1].

Dissolution: For the dissolution of society a general meeting of its members is to be convened. At least three-fifth of the members must express their desire for the dissolution of the society at the general meeting. Once the requisite majority votes for the dissolution of the society the society may be dissolved. Once dissolution is determined steps are to be taken for the disposal and settlement of the property of the society, its claims and liabilities according to the rules of the society if there are any. If there are no rules to this effect then the Governing body has to take a decision in this regard. If there is any dispute between the governing body and the members of the society the matter shall be referred to the principal court of original civil jurisdiction of the District in which the chief building of the society is situated.

Alter, extend or abridge objects: The Act permits the society to alter, extend or abridge its objects (the society may also amalgamate either wholly or partly with any other society). The governing body first draws up a report outlining the reasons for which the alterations of objects is desired. On the basis of such a report resolutions that must be recorded in relation thereto by the members should be framed. Alongwith the notice and agenda of the meeting both the reports and resolutions should be sent to every member of the society so as to reach him at least 10 days before the date of meeting. At the meeting the draft resolution must be agreed by at least 3/5 of the members present in person or by proxy. Another special meeting should be convened at an interval of one month after the first meeting. In this second meeting the agreed proposition must be confirmed by at least 3/5 of the members present in person or by proxy. The clauses of the Memorandum as altered in the manner aforementioned would then be incorporated in the Memorandum of Association of the society and a copy of such a Memorandum should be filed with the Registrar of Society.

1. *Satyavart Sidhantalankar* v. *Arya Samaj, Bombay,* AIR 1946 Bom 516: 48 Bom LR 341.

Rights of your Society:

Please note the reiteration that in order to acquire a legal character the society has to be registered. It then becomes an artificial legal person created to achieve the objects for which it is formed.

(i) *Can sue and be sued*: As discussed under the head "Drafting the Memorandum of Association and Enrolment of Members" of this Chapter, a registered society can sue or be sued in the name of the President, Chairman, or Principal Secretary, or Trustees provided in the rules and regulations of the society.

(ii) *Perpetual succession*: A society also has perpetual succession and is not affected in a legal sense by changes in membership or employees.

(iii) *Limited Liability of members:* As explained earlier in this Chapter under the head "Members", members are not personally liable to settle society's dues, except in specific circumstances.

(iv) *Rights non-transferable*: Membership rights are non-transferable.

(v) *Suits do not abate:* No suit or proceeding in any Civil Court shall abate or discontinue if the person by or against whom such suit or proceeding shall have been brought or continued dies or ceases to occupy the position in the society. The proceedings shall be continued in the name or against the successor of such person, dying or ceasing to occupy the office in the society.

(vi) *Can acquire property:* It is presumed that the property of the society, both movable and immovable, vests in the trustees if so appointed. But if the property does not vest in trustees then it is vested in the governing body of the society. In all civil and criminal proceedings the society's property may be described as the property of the governing body of such society by their proper title. The society's property may be vested in the trustee appointed for the purpose of the governing body. But the trustees or the governing body do not have any beneficial interest in the property, as, in fact, the property belongs to the society. No member can, either individually or jointly, claim any ownership rights in the assets of the society during its existence.

Rights of the Members

(a) **Right to receive notices:** All members are entitled to receive notice of annual general meetings.

(b) **Right to vote:** Members of a registered society are entitled to vote at the annual general meetings – this right is however not available to a member who has not paid his subscription fees for over three months.

(c) **Right to receive copy of bye-laws:** A member is entitled to a copy of the bye-laws, receipt and expenditure account and balance sheet on payment of a fixed fee.

Liability

The liability of a member arises where:

1. he is in arrears of a subscription which he is bound to pay according to the rules of the society.
2. he has possessed and detained any property of the society contrary to the regulations of the society;
3. he has injured or destroyed any property of the society.

For the aforesaid lapses and offences, a member can be sued by the society as a stranger for (i) recovery of the arrears of subscription; (ii) recovery of damages for detaining property of the society; and (iii) remedying the injury or destruction caused to the property. In terms of section 11 of the Act, a member can be prosecuted if he steals, purloins, embezzles money or property of the society; wilfully and maliciously destroys or injures property of the society; forges documents[1] and exposes the society to loss.

MODEL FORM, RULES AND REGULATIONS OF A SOCIETY

1. Name of the Society

Name of the society shall be ....hereinafter referred to as the "Society".

2. Registered Office

The Registered Office of the Society shall be situated at ......

3. Membership Classification, and Qualifications

The membership of the society is open to any person who has attained the age of maturity and fulfils the terms and conditions of the society but subject to the approval of the Governing Body of the society. The Society shall consist of the following categories of members of the Society:

(a) Ordinary member;

(b) Honorary member;

(c) Associate member;

(d) Life member.

Note.—If the membership is not approved by the Governing Body of the society, the reason for the refusal shall be communicated to the person/applicant concerned.

4. Admission Fee and Subscription

The Admission Fee and the Subscription shall be as under unless otherwise revised by the Governing Body of the society:

(a) Admission Fee ₹_____ at the time of admission.

(b) Subscription ₹____ per month.

(c) Life Membership Fee.

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1. Referring to deed, bond, security or money receipt or other instrument.

5. Termination, Cessation Forfeiture of Membership

The Governing Body of the society shall have the powers to expel/terminate a member or/and members, from the membership of the above society, on the following grounds:

(a) on his/her death;

(b) on written resignation;

(c) if found to be involved in any anti-social activities;

(d) if adjudged by any court of law to be a criminal offender;

(e) if member works against the aims and objects of the society;

(f) if fails to pay the montly subscription for three months;

(g) if has not attended three consecutive meetings;

(h) if disregards Rules and Regulations or disobey the decisions of the Governing Body.

Note.—The decision of the Governing Body regarding the termination from the membership of the society, shall be communicated to the member concerned.

6. General Body Defined

All the members of the society will constitute the General Body of the society.

7. General Body Meeting

(a) *Notice.*—Minimum 15 days notice shall be given to the members, before the date of General Body Meeting, enclosing agenda specifying Date, Time, Place and issues to be discussed.

(b) *Meeting.*—General Body Meeting shall be held once in every year regularly.

(c) *Quorum.*—The quorum of General Body Meeting shall be 2/3rd (two-third) of the total strength of the General Body Members of the society.

8. Rights and Privileges of Members

Every member of the society:—

(a) shall be entitled to participate in meetings, cultural/educational functions and other lawful gatherings, called/arranged by the society;

(b) shall be entitled to an Identity Card after depositing the required/prescribed fee (fixed by the Governing Body;

(c) shall be entitled to inspect the record of the society with the prior approval of governing body;

(d) also have the right to vote in the meetings of the society.

9. Duties of the Members

All and every member of the society shall:

(a) elect the Governing Body of the society;

(b) attend the General Body meetings regularly;

(c) give the necessary information to the society, pertaining to any matter which is necessary to be known by the society;

(d) not indulge in activities which are prejudicial to the Aims and Objects and/or the Rules and Regulations of the Society.

10. Governing Body

(a) *Term.*—Term of every Governing Body shall be Five Years.

(b) *Notice.*—Minimum 7 days' notice shall be required for every Governing Body meeting of the Society but Urgent Governing Body Meeting can be called by 24 hours notice.

(c) *Quorum.*—Quorum of every Governing Body Meeting shall be 2/3rd of the total strength of the Governing Body (including office bearers and executive member).

(d) *Meeting.*—Governing Body Meeting shall be held once in three months regularly (or as and when the Governing Body of the society may decide from time to time).

(e) *Urgent Meeting.*—The Urgent Governing Body Meeting may be called by the 24 hour notice but quorum for the same Urgent Governing Body Meeting shall be 2/3rd of the total strength of the Governing Body of the society.

11. Functions and Powers of Governing Body

(a) Governing Body shall be responsible for the management and administration of all affairs of the society, and is also authorized to appoint any office bearer/executive member to look after any particular activity.

(b) All the decisions shall be taken by the majority votes.

(c) The Governing Body shall have the powers as are the powers of the society, mentioned in the Memorandum of the society and in these Rules and Regulations.

The Governing Body shall have also the following powers:—

(i) to prepare plans, projects and programmes;

(ii) to appoint Election Officer and his/her powers.

12. Composition of the Governing Body

The composition of the Governing Body shall be as under:

(a) President	...	One
(b) Vice-President	...	One
(c) General Secretary	...	One
(d) Secretary	...	One
(e) Treasurer	...	One
(f) Executive Members	...	from two to sixteen.

13. Powers and Duties of Office Bearers

A. President

(a) President shall preside over all the meetings of the society.

(b) At the time of voting on any mater/subject (except Election), if the total votes of the groups of members (for and against) happen to be equal in number, the President has the power to cast an extra vote to decide the matter/subject.

(c) President shall have the power to allow inclusion of any subject/matter in agenda for the discussion in the course of proceeding/meeting.

(d) President will sign all the papers/letters, on behalf of the society, to conduct its correspondences.

B. Vice-President

The Vice-President of the society shall enjoy all the powers of the President in his/her absence.

C. General Secretary

(a) General Secretary will summon and attend the meetings of the Governing Body and General Body.

(b) General Secretary will prepare the Membership Register as well as the proceeding Register to record the minutes of the proceedings of the Governing Body Meetings and the General Body Meetings and have them duly signed by the members who attend the meetings.

D. Secretary

The Secretary shall enjoy all the powers of General Secretary in his/her absence.

E. Treasurer

(a) All funds of society shall remain under the care and management of Treasurer.

(b) Treasurer shall maintain the accounts of all money which is received and/or paid by him/her on behalf of the society.

14. Re-Admission

In case, any member of the society is expelled by the Governing Body on the reason of Non-Payment of the subscription, he can be re-admitted, provided the member concerned pays all up-to-date dues with the permission of the Governing Body.

15. Appeals

All the appeals shall be preferred to the Governing Body of the society and the decision of the Governing Body shall be final.

16. Filling Up of Casual Vacancies

Any casual vacancy amongst the Governing Body shall be filled by the resolution passed by the Governing Body. Such appointment(s) shall be confirmed by the General Body in its next General Body Meeting.

17. Election

A. Officers shall be elected by voice.

B. The officers shall be elected by Ballot if any member in good standing files a written request to this effect with the Secretary at least seven days prior to the elections.

18. Sources of Income

All the income of the society shall be utilised only in furtherance of the Aims and Objects of the society. Sources of Income of the society are as under:

(a) Admission Fee and Subscription from the members of the society.

(b) Donations, Contributions and grants from private, public, government departments or institutions or any other suitable sources.

(c) Contributions from Honorary members and Patrons.

(d) Income from gifts, legacies of movable or immovable properties, and

(e) Income from other activities of the Society including publications, etc.

19. Financial Year

Financial year of society shall start from 1st April and end on 31st March, every year.

20. Audit

The accounts of society shall be audited by a qualified auditor (Chartered Accountant) every year.

21. Management of Funds and Accounts Operation

Bank Accounts shall be operated by Joint Signatures of Treasurer and either of the President or the General Secretary.

22. Annual List of Governing Body

Once in every year a list of the Office-Bearers and the Executive Members (of the Governing Body) shall be filed in the office of the Registrar of Societies, Delhi as required under section 4 of the Societies Registration Act, 1860.

23. Dissolution

If the society needs to be dissolved, it shall be dissolved as per the provisions laid down under the sections 13 and 14 of the Societies Registration Act, 1860, as applicable to National Capital Territory of Delhi.

24. Legal Proceedings

Society may sue and/or be sued in the name of President/Secretary as per provisions laid down under section 6 of the Societies Registration Act, 1860, as applicable to National Capital Territory of Delhi.

25. Amendment

Any amendment in Memorandum, Rules and Regulations shall be carried out in accordance with sections 12 and 12A of the Societies Registration Act, 1860, as applicable to National Capital Territory of Delhi.

26. Application of the Act

All the provisions under all the sections of the "Societies Registration Act, 1860", as applicable to National Capital Territory of Delhi, shall be applicable to this society.

27. Essential Certificate

Treasurer, the Form of Registration is certified by the General-Secretary and President as "certified that this is the correct copy of the Rules and Regulations of the Society."



4

TRUST

Introduction

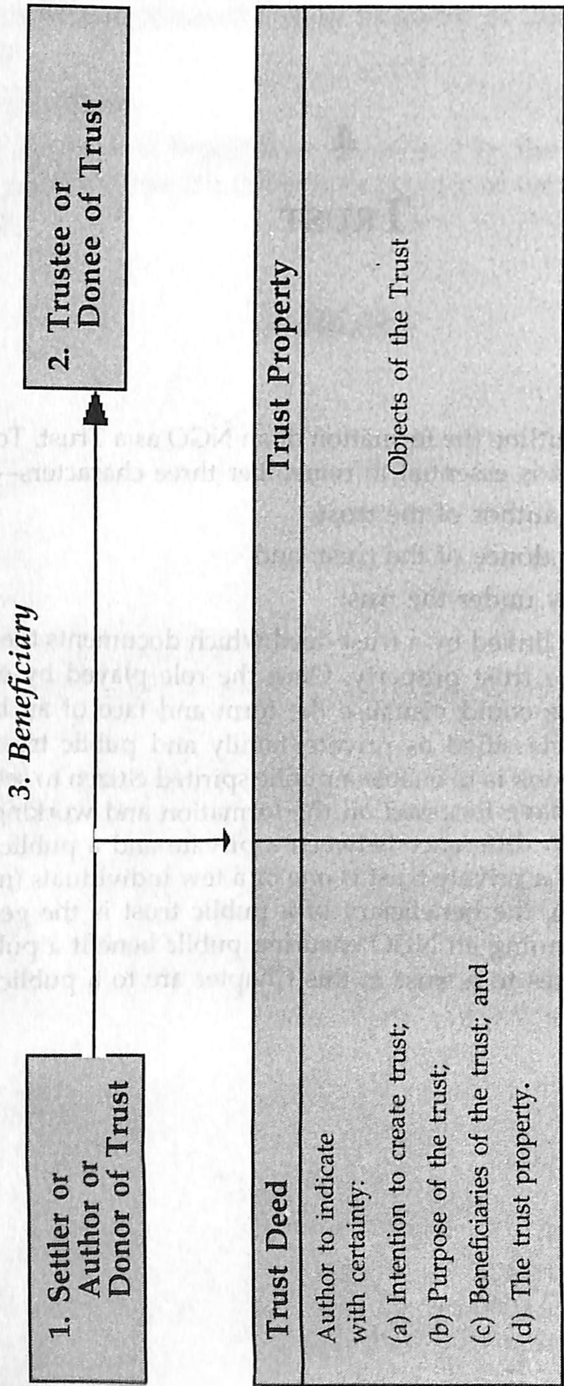
In this Chapter we outline the formation of an NGO as a Trust. To understand the concept of a trust it is essential to remember three characters—

(1) the settlor or author of the trust;

(2) the trustee or donee of the trust; and

(3) the beneficiary under the trust.

The three parties are linked by a trust deed which documents the relationship *inter se* and *vis-à-vis* the trust property. Once the role played by each of these people is described one could visualise the form and face of an Indian Trust. Trusts are commonly classified as private/family and public trusts. Since the main intention of this book is to enable a public spirited citizen to set up an NGO for public benefit, we have focussed on the formation and working of a public trust in India. The main difference between a private and a public trust is that while the beneficiary of a private trust is one or a few individuals (mostly family members of the donor), the beneficiary of a public trust is the general public. For the purposes of forming an NGO ensuring public benefit a public trust can be formed. All references to a trust in this Chapter are to a public trust.


ESSENTIAL FEATURES OF A TRUST
1. Settler or Author or Donor of Trust
2. Trustee or Donee of Trust
3. Beneficiary
Trust Deed
Author to indicate with certainty:
(a) Intention to create trust;
(b) Purpose of the trust;
(c) Beneficiaries of the trust; and
(d) The trust property.
Trust Property
Objects of the Trust

Wakf

A Wakf is the permanent dedication by a person professing Muslim faith of any property for any purpose recognised by Muslim law as religious, pious or charitable.

The ownership of the property is with God and the usufruct income from the said property can be used for carrying out the objects of the Wakf.

Trust

What is a Charitable Trust?

A charitable trust is a legal entity which can be set up by anyone who has decided to commit himself in principle to setting aside some of his assets or income for charitable causes. Trusts are completely independent of government or any external control. The main obligation is to work within the charitable purposes and the powers set out in the Trust Deed.

Features of a Trust – A Trust is created when a donor attaches a legal obligation to the ownership of certain property based on his confidence placed in and accepted by the donee or trustee, for the benefit of another.

The person who intends to create the trust with regard to certain property for a specified beneficiary and who places his confidence[1] in another for this arrangement is called the Author of the Trust; the person who accepts the confidence is called the Trustee; the person for whose benefit the confidence is accepted is called the Beneficiary; the subject matter of the trust is called Trust Property.

Besides serving as a platform for expression of the charitable/ religious sentiments of the author, a trust also entails several tax benefits and makes it an ideal arrangement for ensuring public benefit.

There are two statutes[2] relevant to the functioning of trusts in India: The Indian Trusts Act, 1882; and, Charitable and Religious Trusts Act, 1920. Public Trusts are, however, created by general Deed.

In India there is no Central Act for governing the Public Trusts or Public Charitable Trusts. Some States have their own Public Charitable Trusts Acts. An NGO can be set up only under a Public Trust Act. The States *viz,* Madhya Pradesh, Rajasthan have their independent Public Trust Acts. The States like West Bengal, Jharkhand and Bihar have no such Acts to register a Public Trust.

Charity begins at home – Charity is a matter of State control, so different States of India have their own legislation in the form of Trusts or Endowment Acts to govern and regulate public charitable NGOs.

It is relevant to define 'endowment' at this juncture which is the dedication of property by gift or devise to religious or charitable uses and in a generalised

1 Section 3 of the Indian Trusts Act, 1882.

2 It does not affect the rules of Mohammedan law to *Wakf* or the relationship of the members of joint family or applies to public or private religions or charitable endowments.

context trusts include endowments also. A religious endowment or trust is one which has for its object the establishment, maintenance or worship, of an idol or deity, or any object or purpose subservient to religion.

Charitable Trusts

Trustees control the Trust

The Trustees control the trust's assets and decide how the income (and capital) of the trust is to be used, and ensure that it is in line with the charitable purposes of the trust.

The obligation must relate exclusively to property, the ownership of which vests with the trustees. The obligation must arise out of confidence that is reposed in the trustee. Such confidence, in turn, must be accepted for the benefit of the beneficiaries. A trust must be created for a lawful purpose. The author of the trust must indicate with reasonable certainty the following:

- Intention to create trust
- Purpose of the trust
- Beneficiaries of the trust, and
- The trust property

A public trust is of permanent and indefinite character.

A public trust benefits the public at large or at least a section of the community.

The property forming subject matter of the trust must be capable of being transferable to the beneficiary. Thus property which is inalienable by virtue of public policy or statute does not form valid subject matter for a trust. In terms of section 8 of the Indian Trusts Act, there cannot be as a trust of a beneficial interest under a subsisting trust *i.e.* there cannot be a trust upon a trust.

Power of disposition over property—In terms of section 7 of the Transfer of Property Act, 1882 a person who is competent to contract and entitled to transfer property or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part and either absolutely or conditionally.

There is no prohibition on a beneficiary from being appointed a trustee for himself and for others, though normally this arrangement is not followed by reason of chances of conflict of interests and duty. Again an author can also be a trustee of the trust property. There is no specification author number of trustees and it is upto the author to consider how many may be deemed necessary and the author may also provide for the term of the trustees apart from delimiting the minimum and maximum number of trustees who can be appointed with regard to the subject trust. Foreigners are not prohibited from sitting on the Board of Trustees of a trust. However, the relevant provisions of the Foreign

Exchange Management Act are to be fulfilled, which, in essence, call for previous permission of the Reserve Bank of India for foreigners to practice any profession or carry on any occupation, trade or business in India on specified terms. Any foreigner appointed for work in a charity has to obtain prior clearance from the Reserve Bank of India. Registration with the Foreigners Registration Office[1] is also required. As a matter of course, all visas have to be cleared before entry into India.

Appointment of trustee – is by trust. Usually, the instrument of trust makes mention of the first trustee. A trust can come into being only after the trustee has accepted the obligation and in this regard it is possible for a trustee to disclaim the trust before he has acted as trustee. He may not disclaim the trust after he has acted as trustee.

Dharamshala—A public trust[2] can validly be created only when the settler or creator has indicated (i) his intention to create a trust; and (ii) his intention to transfer the trust property to the trustee; and (iii) his intention has been indicated with reasonable certainty[3]. A Dharamshala constructed on municipal land with funding from another person cannot be a public trust[4].

Any uncertainty or vagueness concerning the above may invalidate the trust.

A trust may be created for any lawful purpose[5]. A trust may be created by every person competent to contract. It is possible for a minor[6] to also create a trust but with due permission from a Civil Court.

Doctrine of Cypres[7]*:* Where the object of the trust becomes unlawful, impracticable or impossible to perform, the court may direct the trust to be applied to a parallel charitable object which is similar to the specified object, as nearly resembling it as possible.

In case of a public trust for immovable property, a written trust deed is not mandatory but desirable. In a trust for movable property, a simple delivery of possession with a direction that the property be held under trust is sufficient. There is no requirement for registration.

Laws Governing Trusts

Indian Trusts Act, 1882 – This Act applies only to private trusts and not to public trusts. However, the principles forming the basis for the provisions of the Act can be applied to public trusts too.

Charitable and Religious Trusts Act, 1920 – This Act applies to all religious and charitable trusts.

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1. Situated at Mumbai, Delhi, Calcutta and Chennai.
2. In terms of "public trust" as defined in section 2(13) of the Bombay Public Trusts Act, 1950.
3. *See* section 6 of the Indian Trusts Act, 1882 for the essentials of creating a trust.
4. *Cambay Municipality* v. *Ratilal Ambalal Reshamwala,* 1995 Supp (2) SCC 591.
5. Section 4 of the Indian Trusts Act, 1882.
6. Section 7 of the Indian Trusts Act, 1882.
7. *"Cypres"* – in a way as nearly as possible to that which the testator has specified.

Wakf Act, 1995 – For Muslims only – where the Wakf is for public benefit.

Sikh Gurudwara Act, 1925 – Sikh Gurudwaras are regulated by this Act.

Indian Trustees Act, 1866 – pertains to conveyance and transfer of property vested in trustees and mortgagees.

Religious Endowments Act, 1863 – enabling the Government to divest itself of the management of Religious Endowments.

Trustees and Mortgagees' Powers Act, 1866 – giving trustees and mortgagees certain powers commonly inserted in settlements, mortgages and Wills.

Public Trusts are required to comply with the provisions of the Indian Registration Act, 1908 (registration of the trust deed), Transfer of Property Act, 1882 for settlement of immovable properties on trusts, besides the Income-tax Act, 1961 for certain exemptions and the Foreign Contribution (Regulation) Act, 1976 for accepting any foreign contribution from foreign sources.

Extinguishment of a trust

A charitable or religious trust cannot be revoked.

A trust is extinguished:—

1. when its purpose is completely fulfilled; or
2. when its purpose becomes unlawful; or
3. when the fulfilment of its purpose becomes impossible by destruction of the trust property or any other cause; or

when the trust being revocable is revoked.

Rights of a Trustee

> **Flexibility in naming your Trust**
>
> You can choose what to call your trust – your family name, or that of an honourable person. The organisation can also be called a 'foundation' or 'charity' or any similar term as these words are practically interchangeable in legal parlance.

These include—

(i) Right to have in his possession the instrument of trust and all documents of title to the trust property;

(ii) Right to claim reimbursement out of the trust property for all expenses properly incurred in or about the execution of the trust or the realisation, preservation or benefit of the trust property;

(iii) Right to recover personally from the beneficiary;

(iv) Right to be indemnified by a person who has gained an advantage from a breach of trust;

(v) Right to apply to the court for its opinion, advice or direction in respect of the management or administration of the trust property;

(vi) Right to have the accounts examined and settled by the beneficiaries and to obtain discharge from them in writing, upon determination of the trust.

Powers of a trustee

1. Powers conferred by the instrument of trust;
2. Powers to do all acts which are reasonable and proper for the realisation, protection or benefit of the trust property, and for the protection or support of beneficiary who is not competent to contract;
3. Power to sell any trust property either together or in lots, by public auction or private contract, and either at one time or at several times, unless the trust deed otherwise directs;
4. Power to stipulate such conditions as to title or evidence of title in a sale contract, as he thinks fit;
5. Power to buy any property in an auction sale and rescind or vary any contract of sale or resell any property so bought;
6. Power to convey or otherwise dispose of the property sold, in such manner as may be necessary;
7. Power to vary the investments with the consent in writing of the beneficiary who is competent to contract and entitled to receive the income of the trust property for his life;
8. Power to issue receipts in writing for any money, securities or other movable property payable, transferable or deliverable to him as trustee;
9. Power to accept any composition or any security for, to compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim, etc. and to execute any such instrument as is necessary to carry out the aforesaid purposes;
10. Power to execute the trust by the continuing trustees, when one of the several trustees dies or disclaims, subject to the terms of the trust deed.

Special Powers

1. Power to incur debts and borrow moneys for the proper expenses of up keep, repair, institute or defend suits and to prevent the endowed properties from being brought to sale in execution of a decree binding upon the institution;
2. Power to alienate the property in case of legal necessity or for the benefit of the estate;
3. Power to dispose and administer the endowed properties and to create derivative tenures in respect of endowed properties.

Removal of a trustee

(i) if he becomes unfit or personally incapable to act in the trust;

(ii) if found guilty of—

—abuse of office,

—acting dishonestly or fraudulently,

—Misappropriation of funds,

—Moral turpitude,

—Application of trust property to private purposes.

The office of trusteeship cannot be transferred for pecuniary consideration – such a transfer is void. However, hereditary trusteeship (religious or charitable trust) enjoyed by turn is an immovable property and a gift of it must be made by a registered instrument.

Rights of beneficiary of a public trust

A public trust is more of an obligation than a right for the beneficiary—public. Two or more persons having an interest in a public charitable or religious trust, may sue against the trustee to claim relief under section 92 of the C.P.C.

Liability

Where one of several beneficiaries—

Joins a breach of trust; or

Knowingly obtains any advantage therefrom without obtaining the consent of other beneficiaries;

On becoming aware of a breach of trust, either actually conceals it or does not, within a reasonable period of time take proper steps to protect the interests of the others; or

Deceives a trustee and thereby induces him to commit a breach of trust, he shall be liable to his co-beneficiaries and his beneficial interest shall be impounded at the instance of his co-beneficiaries until all the loss to the estate is made good.

Conduct of Business by a Trust

Trusts can mean business: A valid trust can commence and carry on its own business[1], derive income from such business and apply the income for the objects of the trust provided that:

(a) The trust deed authorises the aforesaid business; and

(b) The objects of the trust are not illegal or immoral; and

(c) The business sought to be carried on by the trust is a normal legal business; and

(d) The trust is not illusory or fraudulent.

Subject to the above, the trust deed must be allowed to operate in the manner contemplated by the settlor.

Trusts can enter into partnerships: Thus a trust may enter into a valid partnership[2] for carrying on business and a trustee may also enter into a

1. *K.T. Doctor* v. *Commissioner of Income-tax,* (1980) 124 ITR 501 (Guj).
2. *Commissioner of Income-tax, West Bengal* v. *Juggilal Kamalapat,* (1966) 62 ITR 292: AIR 1967 SC 401: (1967) 1 SCR 784.

partnership on behalf of the trust where the beneficiaries are unborn persons[1] like schools, hospitals and charitable institutions.

Lifting of corporate veil not allowed: The doctrine of "lifting of corporate veil[2]" which is permissible and applicable to companies whereby the separate entity of a company can be ignored under the doctrine cannot be adopted[3] in the case of trusts. Thus, where a trust is carrying on a business through its trustees, the Income-tax department cannot lift the corporate veil and on this ground conclude that the business is being carried on by another person other than the trust.

Charitable Object: "Any mode of promoting the welfare of mankind[4]" would be a charitable object. The law recognizes no purpose as charitable unless it is of a public character. It is well-settled that an object beneficial to a section of the public is an object of general public utility. To serve a charitable purpose it is not necessary that the object should be to benefit the whole of mankind or all persons in a country or the State. It is sufficient if the intention to benefit a section of the public as distinguished from a specified individual is present. The section of the community sought to be benefitted must be sufficiently definite and identifiable by some common quality of a public or impersonal nature (for example where the beneficiaries are members of the Rana community[5]). In a case where the trustees were directed to apply certain income in providing for the education of children of employees or 'former employees' of a British limited company – it was held by the House of Lords that though the group of persons were numerous, the nexus between them was employment by the particular employers and accordingly the trust did not satisfy the test of public benefit requisite to establish it as charitable[6].

Betting on horses in races whether of public benefit: Betting on horses in races cannot be said to be beneficial to the public. It was contended that the object of the assessee was promotion of races; that it would only amount to promotion of sports; not an advancement of trade to commerce or industry; that when racing does not confer any public benefit and since betting on horse is one of the essential concomitants of the activity of racing, it cannot be said that betting on horses is beneficial to the public[7]. Where part of the income of a horse racing club are applied for charitable purposes, the test to determine whether 'charitable purpose' has been fulfilled would be to ask the question: what use is the property put or for what purpose is the property put[8]. Also to ascertain whether the occupation or use it for a 'charitable' purpose. Where the occupation and use is to conduct horse races and to train horses for racing, the

1. *Additional Commissioner of Income-tax, Kanpur* v. *Ram Krishna Gupta,* (1979) 117 ITR 218.
2. As a means to ascertain the real identity of the person behind the corporate body.
3. *K.T. Doctor* v. *Commissioner of Income-tax,* (1980) 124 ITR 501 (Guj).
4. *White* v. *White,* (1893) 2 Ch 41 (CA).
5. *Commissioner of Income-tax* v. *Ahmedabad Rana Caste Association,* (1983) 140 ITR 1.
6. *Oppenheim* v. *Tobacco Securities Trust Co. Ltd.,* (1951) 1 All ER 31: (1951) 1 TLR 118: (1951) AC 297 (HL).
7. *Bangalore Race Club* v. *Commissioner of Income-tax,* (1970) 77 ITR 435 (Mys).
8. *Municipal Corporation of Hyderabad* v. *Hyderabad Race Club,* AIR 1987 SC 92: (1986) 4 SCC 696: 1987 (1) SCJ 70.

activity is not a benevolent activity with an intent to benefit the poor and the helpless.

Relief of poor: The relief of the poor must not be relief to a body of private individuals but must have a public character[1]. If the object of a trust is to help only the poor relations of the settlor, the same will not be a public charitable object though the relations may be poor and indigent. The law is settled that if a trust has more than one object and one is non-charitable, then if the hands of the trustees have been left unfettered in the distribution of the income between charitable and non-charitable objects, the trust concerned would not be entitled to exemption from income–tax. The assessee trust has as its objects, the advancement of objects beneficial to mankind or of general utility and also the support and maintenance of poor and indigent relations of the settlor. The trustees were given absolute discretion to spend the income of the trust as they deemed fit – here the trustees could spend the entire income of the trust for the support and maintenance of the relations of the settlor who were poor without exercising any preference.

At the same time, if the dominant object of a trust is to grant relief to indigent persons of making payments or contributions towards their support and aid, the circumstance that a direction has been given in the trust deed to prefer the poor relations of the settlor will not affect the validity of the trust or in any manner derogate from the trust being one for a public purpose of a charitable nature – "A trust does not cease to be one wholly for a public charitable purpose because there are reservations of a private nature if they are not destructive of the primary object of benefiting the public. In certain premises used for religious and charitable purposes, there was a Jain temple in which the public were allowed to worship, a permanent exhibition and a library containing collections of works of Jain art and culture which members of the public were allowed to use and enjoy, and a hall which was used for holding public meetings. The settlor had provided that his sons, grandsons and other descendants have the right to use the premises on the occasions of marriages and festivities. It was held that notwithstanding the right to use the premises on such occasions, the reservation did not cut down the general object of religious/public charitable purpose[2].

Education – Registered society with main object to extend financial assistance to poor and deserving students of *Saraswath* community by way of loans, scholarships and grants for purchase of books or other educational requisites activities fell within the ambit of "charitable purpose"[3] of section 2(15) of Income Tax Act, 1961 and entitled to exemption under section 11 of Income Tax Act, 1961.

The sense in which the word "education" has been used in section 2(15) of Income Tax Act, 1961 is the systematic instruction, schooling or training given to the young in preparation for the work of life. It has not been used in that wide and extended sense according to which every acquisition of further knowledge

1. *Mullick Somnath Charitable Trust* v. *Commissioner of Income-tax*, (1986) 160 ITR 3 (Cal).
2. *Commissioner of Income-tax, West Bengal* v. *Keshari Singh Nahar*, (1963) 50 ITR 33.
3. *Commissioner of Income-tax, Karnataka II, Bangalore* v. *Saraswath Poor Students Fund*, (1984) 150 ITR 142.

constitutes education. Education in order to be charitable, must relate to the public and a trust created for the education of (awarding of scholarships[1]) the members of a family or descendants of an individual is not for charitable purposes.

Objects of the trust deed

In determining the purpose of your charity, it is important to consider its object as stated in its founding documents; *Keren Keyemeth Re Jisroel Ltd* v. *I.R. Commrs.*, (1932) 17 TC 27.

The activities of the Trust are also watched after it is set up; *Royal Australasian College of Surgeons* v. *F.C. of T.*, (1943) 68 CLR 436.

Where the objective of the Trust is to monitor legislation and advise on changes to legislation, the same cannot be termed a charity. For example, a society for protecting the unborn had the purpose of opposing changes in the law on abortion, would be political - not charitable; *Molloy* v. *Commr. of I.R.*, (1977) 3 NZTC 61 (218).

In a particular case the purpose of the trust was to educate the people of India in general and of Karnataka in particular by (a) establishing institutions calculated to educate the people by disseminating information on all matters of general interest (b) running reading rooms and libraries and keeping printing houses and publishing books, booklets etc. (c) supplying the Kannada speaking people useful news for the ventilation of public opinion on matters of general public utility. The trust conducted a printing press, published a daily paper and a weekly paper, and also published books, pamphlets and other literature as a result of which the property in the trust increased from time to time. The object of the trust was not educational. Though newspapers have educative value, advancement of education results only indirectly[2]. advancement of education resulting indirectly does not come under the head of "education" it is a business undertaking held under the trust and involves the carrying on of a commercial activity for profit and such a case ceases to be a trust for charitable purposes under the Act. In the instant case, the main object of the trust is supplying the Kannada speaking people with an organ of educated public opinion. The statement of income and expense of the trust shows that the income of the trust is largely from the newspaper undertaking. Carrying out the trust necessarily involves the commercial activity of running a newspaper organisation, which is not a charitable purpose as defined under the Act.

"Education" connotes the process of training and developing knowledge of students by normal schooling. A museum cannot be taken to be an educational institution existing solely for educational purposes[3]. It is not entitled to exemption under section 10(22) of the Act. Visiting a museum is one way of education in the school of life but it is not the sense in which the word "education' is used in section 2(15).

1. *D.V. Arur* v. *Commissioner of Income-tax*, (1945) 13 ITR 465 (Bom).
2. *Commissioner of Income-tax, Mysore* v. *Sole Trustee, Loka Shikshana Trust*, (1970) 77 ITR 61.
3. *Commissioner of Income-tax* v. *Maharaja Sawai Mansinghji Museum Trust*, (1988) 169 ITR 379 (Raj).

Where a charitable trust is established for the benefit of members of the police and their families, the beneficiaries of such a trust would constitute a section of the public[1]. There cannot be any analogy between public employment and private employment. In the case of private employment, the nexus between employer and employee is a personal nature. In a public employment, the public is the ultimate employer and there is no personal nexus.

Lease/Licence by a Trust: (*Prem Nath* v. *Shri Mata Vaishno Devi Shrine Board, Katra*, AIR 2003 J&K 1). The Plaintiff who conducted his business from a shop at Mata Ka Bagh, Trikuta Hills, Katra sought injunction against forcible eviction by the Shrine Board. However, documents executed by and between the Board and the plaintiff regarding possession of shop and user, showed a clear intention that the contract was for use of property in a certain way and on certain terms (as in a licence) and premises was to remain in possession and control of owner (no lease being created). Use of the word "rent" did not establish a landlord and tenant relationship, it was used in a broad context as payment for user and occupation only. Further tender notice issued by the Dharmarth Trust for grant of licence for the shops enroute Holy Shrine and circular of the Trust clearly indicated the grant of licence in respect of shops and hotels at Vaishno Devi. These documents belied the plea of the plaintiff. Hence, the Plaintiff(s) claim that he was a tenant of the Dharmarth Trust/Shrine Board failed and he was not entitled to an order of injunction. For injunction, it is settled position that there has to exist a legal right and its infringement is the *sine qua non* for grant of injunction. The licensor/trust was entitled to deal with the property in a manner which the trust deemed suited and the licensee after the term of the license is a trespasser.

TRUSTEE

The trustee is bound to fulfil the purpose of the trust and to obey the directions of the author of the trust *i.e.* he must execute the trust, and perform his duties as enumerated below:

1. A trustee is required to inform himself of the state of trust property *i.e.* he is bound to acquaint himself with the nature and circumstances of the trust property,
2. A trustee must protect title to trust property *i.e.* he is bound to maintain and defend if required for the preservation of the trust property and the title to the trust property,
3. The trustee must not for himself or for others set up or aid any title to the trust property adverse to the interest of the beneficiary,
4. A trustee is bound to deal with the trust property as carefully as he would have done if it were his own property,
5. If the trust property is of wasting nature, the trustee is bound to convert the property into a property of permanent and immediately profitable character,

1. *Commissioner of Income-Tax* v. *A.P. Police Welfare Society*, (1984) 148 ITR 287.

6. Where there are more than one beneficiaries, the trustee is bound to be impartial and must not execute the trust for the advantage of one at the expense of another, and
7. A trustee is bound to keep clear and accurate accounts of the trust property and furnish the information regarding the same to the beneficiary on his request.

A trustee may be discharged from his office only:—

1. by the extinction of trust, or
2. by completion of his duties under the trust, or
3. as prescribed by the instrument of trust, or
4. by appointment of new trustee in his place, or

by the consent of himself and the beneficiary.

1. A trustee has power to call in any trust property invested in any security and invest it on any other investment and from time to time vary any such investment,
2. Two or more trustees acting together has power to:—
   a. accept any composition or any security for any debt or for any property claimed,
   b. allow any time for payment of any debt,
   c. compromise, compound, abandon, submit to arbitration or settle any debt, account, claim or thing relating to trust,
   d. enter into or execute agreements and instruments of composition or arrangement, release or other things as seems expedient, and
   e. if a co-trustee dies, the remaining trustee has the power to exercise the powers relating to the trust and trust property.

What are the disabilities of trustee?

Trustees are also subject to certain disabilities. Important amongst these are:

— Disability to renounce trust;
— Disability to delegate trust;
— Disability to charge for services.

A trustee who has accepted the trust cannot afterwards renounce it subject to certain exceptions,

1. A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger subject to certain exceptions,
2. When there is more than one trustee, all must together execute the trust, a co-trustee cannot act singly,
3. A trustee has no right to remuneration for his trouble, skill and loss of time in executing the trust,
4. A trustee may not use the trust property for his own profit or for any other purpose not connected with the trust,

5. A trustee whose duty is to sell the trust property or his agent may not buy the same property on his own account or as an agent for third person,
6. A trustee may not buy beneficiary's interest without permission.

Co-trustees may not lend to one of themselves the trust money.

Beneficiary

Rights:

(i) A beneficiary has right to rent and earn profits of the trust property;
(ii) The beneficiary is entitled to have the trust specifically executed to the extent of beneficiary's interest;
(iii) The beneficiary has the right to inspect and take copies of the instrument of trust, the documents relating to trust property and the accounts of the trust property;
(iv) If the beneficiary is competent to contract he has the right to transfer his interest;
(v) If for any reason the execution of the trust by the trustee becomes impracticable the beneficiary may institute a suit for the execution;
(vi) The beneficiary has a right that the trust property shall be properly protected, held and administered by proper persons;
(vii) The beneficiary has a right that his trustee shall be compelled to perform his duty properly.

A Trust can be distinguished from a contract, agency, or a bailment in certain aspects:

Features of a Trust and other legal arrangements

Trust	**Gift**
Legal ownership vests with trustee for the benefit of the beneficiary.	In a gift there is complete delivery of property and title thereof.
Trust	**Agency**
In a trust, nominal ownership in the trustees and beneficial ownership is with the beneficiary.	Here the person on whose behalf the agent is acting, has complete ownership of the property.
Trust	**Bailment**
In this legal arrangement, an obligation is annexed to ownership of the property.	Here the bailor transfers possession and not ownership of the property for the bailee to accomplish a certain purpose and restore the property to the bailor.

Specimen Trust Deed of a General Charitable Purpose

This Deed of Public Charitable Trust executed on this .... Day of ....20..........Between Shri/Smt. .... Son of Shri/Smt.

.... Resident of ....hereinafter called the 'Settlor' (which expression shall, unless excluded by or repugnant to the context, be deemed to include his executors, administrators and representatives) of the one part, and

(1)................................ (2)..................................

(3)................................ (4)..................................

(5).........................., and (6)..................................

hereinafter jointly referred to as 'trustees' (which expression shall, unless excluded by or repugnant to the context, be deemed to include the trustee or trustees for the time being of these presents and their successors in office) of the other part.

Whereas the Settlor is desirous of establishing a trust for public charitable objects.

And whereas the trustees have, at the request of the settlor, agreed to act as the first trustees of these presents as testified by their being parties to and executing these presents.

And whereas it is necessary to declare the objects and terms of the public charitable trust, being constituted under these presents.

Now this indenture witnesseth as follows:—

1. That, in order to effectuate his aforesaid desire, the settlor has set apart and handed over to the trustees, a sum of ₹______ (hereinafter called the 'Trust Fund' which expression shall include cash and any other property or investments of any kind whatsoever into which the same or any part thereof might be converted, invested or varied from time to time or which may be acquired by the trustees or may come to their hands by virtue of these presents or by operation of law or otherwise howsoever in relation to these presents), and the trustees shall hold and stand possessed of the same upon the trust subject to the powers, provisions, agreement and declarations hereinafter contained.
2. That the name of the trust shall be .... and its office shall, for the present, be situated at .... and/or at such other place or places as the trustees may decide from time to time.
3. That the objects for which this trust is established are:
   (a) The trust is being organised for the purpose of relieving the poverty, misfortune, destitution, disadvantage, distress, dispassion and suffering of Indian citizens by promotion of spiritual, physical, mental, educational development and upliftment of adults and children of all ages without any distinction of caste creed, sex or religion and to empower the physically challenged and down-trodden.
   (b) To establish, develop, maintain and grant aid in cash or in kind to hospitals, medical schools, medical colleges, nursing institutions, dispensaries, maternity homes, child welfare centers and/or such other similar charitable institutions in India for the benefit and use of the general public.

(c) To establish, run, support and grant aid or other financial assistance to schools, colleges, libraries, reading rooms, universities, laboratories, research and other institutions of the like nature in India, for use of the students and the staff and also for the development and advancement of education and diffusion of knowledge amongst the public in general.

(d) To establish, maintain and run studentships, scholarships and render other kind of aid to students including supply of books, stipends, medals and other incentives to study, without any distinction as to caste colour, race, creed or sex.

(e) To promote, establish, support, maintain or grant aid to institutions for the promotion of science, literature, music, drama and fine arts, for the preservation of historical monuments and for the research and other institutions, in India, having similar objects for the benefit of the public in general.

(f) To create unifying educational, artistic and cultural events and activities, that promote the trust's objects and general funds for the purposes related to the Trust's objects.

(g) To establish, maintain or grant aid for the establishment and/or maintenance of parks, gardens gymnasiums, sports clubs, dharamshalas and rest houses, for use by public in general.

(h) To promote spiritual studies and open spiritual training and Yoga centres for general public and to increase the natural spiritual fellowship among all persons and to take affiliation from international organisations and to organise spiritual programmes and functions for general participations.

(i) To establish, maintain or grant aid to homes for the aged, orphanages or other establishments for the relief and help to the poor, needy and destitute people, orphans, widows and aged persons.

(j) To establish, run, maintain and develop institutions for the physically handicapped and disabled or mentally retarded persons and to provide them education, food, clothing or other help and to provide facilities including procurement and/or manufacturing of artificial links (Prosthetics) and Orthotic appliances, including fitting and training in use of prosthetics.

(k) To grant relief and assistance to the needy victims during natural calamities such as famine, earthquake, flood, fire, pestilence, etc., and to give donations and other assistance to institutions, establishments or persons engaged in such relief work.

(l) To establish permanent exhibits and live displays and community based educational facilities for courses, workshops, conferences, training programmes and educational tours.

(m) To construct, repair and manage the *marghats*, cemeteries and burial grounds.

(n) To grant aid or render assistance to other public charitable trusts or institutions.

4. That the Trust Fund may be augmented by the income from the initial fund and also by donations and other contributions from time to time.

5. That the Trust Fund shall not be applied for any purpose other than those specified in para 3 hereinabove.

6. That the trustees shall always maintain proper accounts of the trust which shall be kept at the office of the trust.

7. That for the furtherance of the objects of the trust, the trustees shall have the following powers:—

(a) To accept any donation, contribution, grant or subscription in cash or in kind, from any person(s), body of persons or trust, with or without conditions.

(b) To apply the whole or any part of the income of the trust, or the Trust Fund or accumulations thereto, to any one or more of the objects of the trust, as the trustees may, in their discretion, deem fit from time to time.

(c) To convert and deal with the trust property and/or any investments for the time being.

(d) To invest the Trust Fund either in the purpose of mortgage of immovable property or in shares, stock or debentures or other securities and investments, or in deposits with or loans to any company, bank, firm or any other person, and to alter, vary or transpose such investments, from time to time at the discretion of the trustees.

(e) To borrow or raise or secure payments of moneys and also to lend money either with or without security.

(f) To sell, dispose of, alienate or otherwise deal with any property comprising the Trust Fund.

(g) To let out, demise any immovable property comprised in the Trust fund for such period and at such rent on such terms and conditions as the trustees in their discretion may think fit.

(h) To open account in the name of the trust, trustees and/or Institutions run/conducted by the trust with a Bank or Banks, to operate such account and to give instructions to the Bank and to provide for opening and operation of such account by one or more of the trustees or by an agent appointed by the trustees.

(i) To adjust, settle, compromise, compound, refer to arbitration, all actions, suits, claims, demands and proceedings regarding the Trust Fund.

(j) To appoint constituted attorneys or agents and to delegate to such attorneys or agents all or any of the powers vested on them under these presents and from time to time remove such attorneys or agents and to appoint other or others in his or their place.

(k) To appoint or make provision for the appointment of any person (including all or any of the trustees and committees or administrator or Managing Trustees or otherwise) for the purpose of the administration of the trust in such manner and subject to such rules and regulations as the trustees may prescribe and also to appoint or provide for the appointment of separate trustees to hold any fund or investment subject to the provisions of this Deed in such manner and subject to such rules and regulations as the trustees may from time to time think fit.

(l) To make, vary, alter or modify schemes, rules and regulations for carrying out the objects of the trust and for the management of the affairs thereof and/or running any institution in furtherance of the objects of the trust and otherwise for giving effect to the objects of the trust.

(m) To start, abolish, discontinue and restart any charity or charitable institutions for the benefit of general public and to impose any conditions to any subscription or donation made by them.

(n) To set apart and/or allocate the whole or a part of the income or the corpus of the Trust Fund or part thereof for any of the objects of the trust.

(o) To join, co-operate or amalgamate this trust with other or others having kindred or allied objects, upon such terms and conditions as the trustees may in their discretion think fit, particularly having regard to and in conformity with the objects and nature of this trust.

(p) To give aid by way of donations out of the income or the corpus of the Trust Fund or otherwise, to different charitable institutions, societies, organisations or trusts in India which may have been established or which may hereafter be established for the like charitable purposes mentioned in these presents or any of them to enable such institution, societies, organization or trustees to start maintain, or carry out such charitable objects.

(q) To settle all accounts and to compromise, compound, abandon, or refer to arbitration any action or proceedings or disputes, claim, demand or things, as deemed proper for such purpose without being responsible for any loss occasioned thereby.

(r) To borrow moneys either on the security of any property comprised in the Trust Fund or otherwise for all or any of the purposes of these presents, and it shall be lawful for the trustees to make such borrowings on payment of such interest and otherwise on such terms and conditions as they may in their absolute discretion think fit.

(s) To apply to the Government, public bodies, urban, local, municipal, district and other bodies, corporation, companies, or persons for and to accept grant of money and of aid, donations, gifts, subscriptions, and other assistance with a view to promoting the objects of the Trust and to discuss and negotiate with the Government Departments, public

and other bodies corporations, companies or persons, scheme and other work and matters within the objects of the Trust and to conform to any proper condition upon which such grants and other payments may be made.

(t) To take over or amalgamate with any other charitable trust, society, association, or institution with similar objects.

(u) To establish, promote, manage, organize or maintain or to assist in establishing, promoting, managing, organizing, or maintaining any branch of the trust or any other trust or its branch with object similar to those of this trust and to promote or carry on the affiliation or amalgamation of such other trust with this trust.

(v) To take over, acquire, manage, control or aid any existing institution or institutions having objects either wholly or in part similar to the objects of this trust and on such terms and conditions as may be thought expedient.

(w) To purchase or otherwise acquire and undertake all or any part of the property, assets, liabilities and engagement of any or more of the trusts, societies, institutions or associations with which this trust is authorized to amalgamate.

(x) To transfer all or any part of the property, assets, liabilities and engagements of this trust to any one or more of the trust, societies, institutions or associations with which this trust is authorized to amalgamate.

(y) To transfer and hand over the trust to any other society, corporation, institution, trust or organization on such terms and conditions as the trustees shall in their absolute discretion think fit and proper to be held by the society, corporation, institution, trust or organisation with the powers, provisions, agreements and declarations, appearing and contained in these presents subject to such modifications as may be necessary and consequent to such transfer of the trust fund. The trustees for the time being of these presents shall become discharged from the trust hereof relating to Trust Funds so transferred.

8. The trustees shall be accountable only for such moneys, stocks, shares and funds as shall actually come into their hands and a trustee shall not be answerable or accountable for neglect, default, acts or omission or commission of the other trustees, nor or any banker or other person with whom the trust properties or any securities may have been deposited or kept.

9. The trustees will not be entitled to receive any remuneration, but the trustees may reimburse themselves all expenses actually incurred by them in connection with the trust or their duties relating thereto.

10. The number of the trustees shall not be less than two and more than seven. If the number of the trustees shall fall below two, the trustees shall not, except for the purposes of filling any vacancy, act so long number is below the said minimum.

11. The Managing Trustees for the time being will be at liberty to appoint additional trustee within the number mentioned above for such period or on such terms as to retirement and re-appointment as the trustees for the time being consider proper. A person shall cease to be a trustee either: (i) if he without leave of absence does not attend three consecutive meetings of the trustees or for one calender year, whichever is longer, or (ii) if he is requested to resign by 3/4th or as near thereto as possible of the remaining trustees.
12. Every trustee will be at liberty to resign on giving one month's notice of his intention to do so.
13. The trustees may from time to time frame rules for the conduct and regulations of the meetings of trustees. In the absence of such regulations:—
    (a) Two trustees shall form a quorum for a meeting of the trustees.
    (b) All matters will be decided mutually by the trustees.
    (c) Resolution passed without any meeting of the trustees but by circulation thereof and evidenced in writing under the hands of two thirds of the trustees shall be as valid and effectual as a Resolution duly passed at a meeting of trustees.
14. The trustees shall have the power to determine in case of doubt whether any moneys or property shall for the purpose of the charity be considered as capital or income and whether out of income or capital any expenses or outgoing ought to be paid or borne and every such determination shall be binding and conclusive provided that nothing contained shall be deemed to authorize the trustees to spend the income or corpus of the trust for any purpose not authorized by these presents.
15. The accounting year of the trust shall be the financial year ending on 31st March every year.
16. The trust and the trust funds shall be and irrevocable for all times.
17. The office of the trust shall be situated at Delhi unless changed by the trustees by two thirds majority.
18. It is expressly declared that no part of the trust property or its income or any accretion thereto shall be applied for any purpose outside India or for any purpose which is not a charitable purpose in law, and all provisions hereof shall be construed accordingly.

In witness whereof the parties hereto have hereunto seen and subscribed their respective hands, on the day, month and year first mentioned hereinabove.

Witnesses:

(Settlor's signature)

1.

(Trustee's signature)

2.



5
Non-Profit Company

Wide ambit of non-profit activity: A Non-Profit Company can be formed for any non-profit or Non-commercial activity. It is identical to an ordinary company in all respects except that it is not established for profit or non-commercial and commercial interest. It is also called a section 8 Company and is a voluntary association of people, registered under the Companies Act, 2013. The Companies Act, 2013 applies uniformly to all non-profit companies across the length and breadth of India and this in fact provides an impenetrable armour against vested interests. The accountability aspect of a non-profit company because of statutory disclosure requirements is a relevant advantage of a company's operational transparency and ability to invoke and maintain public faith.

Objectives of a Non-profit company: Objectives of a non-profit company can include promotion of commerce, art, science, religion, charity or any other useful object. Profits are applied for promoting only the objects of the company and no dividend is paid to its members. (Section 8 of the Companies Act, 2013). A non-profit company may be Public or Private. If the non-profit company is a private company a minimum of only two members are required to form it. However, if the non-profit form is for a public purpose, then a minimum of seven members are needed. A 'Section 8 Company' is eligible for certain exemptions from provisions of law and concessional rate of fees etc.

Characteristics of a company

- *Unique Legal personality:* It is an artificial legal person created by law to achieve the objects for which it is formed. It has a distinct legal entity entirely independent of the members constituting it. Once registered, another person cannot register another non-profit company anywhere in India with the same name and objectives as the already existing company. The non-profit company has a nationality and domicile but cannot claim the fundamental rights guaranteed to natural citizens. However, a company can challenge any law that violates the fundamental rights of the citizens.

- *Perpetual succession:* A company has perpetual succession and is not affected by changes in membership or employees.

- *Limited liability:* This, in essence, means that members and executives are not personally liable to settle company's dues, unless they give their consent in writing for specific transactions.

• *No profit sharing:* A Section 8 Company cannot distribute profits or assets to its members.

• *Voting rights:* Voting rights are provided according to number of shares held.

Steps to establish a Section 8 Company

(a) Application for a name

Applying for availability of name to the Registrar of Companies is the first step towards registration of a non-profit company. Four names are to be suggested to the Registrar in the prescribed Form. (Refer Appendix for a copy of Form).

(b) Memorandum and Articles

Memorandum and Articles of the non-profit company are required to be approved by the Regional Director and the ROC. The documents required for submission of application are:

i. Three printed copies of the Memorandum and Articles of Association of the applicant company, signed by all the promoters with full name, address and occupation (No stamp duty is payable on the Memorandum and Articles of Association);

ii. A declaration by an advocate[1] or a chartered accountant that the Memorandum and Articles of Association have been drawn up in conformity with the provisions of the Act and that all the requirements of the Act and the Rules made thereunder have been duly complied with, in respect of registration;

iii. List of the names, addresses and occupation of the promoters, members of Board of Directors, names of companies, associations and other institutions in which promoters of the applicant company are directors or hold positions, description of the positions held by them (three copies).

iv. A statement of assets and liabilities;

v. Source of income of the applicant company and estimate of annual expenditure;

vi. A statement giving a brief description of the work, if any, already done by the association and of the work proposed to be done by it after registration, in pursuance of section 8;

vii. A statement on grounds on which the application is made under section 8 of the Companies Act, 2013;

viii. A declaration by each of the persons making the application that he/she is of sound mind, not an undischarged insolvent, not convicted by a court for any offence and does not stand disqualified under section 203 of the Companies Act, 2013 for appointment as director. (Refer Appendix on Model Application by a New Association for Grant of Licence and Registration under section 8).

1. An advocate of Supreme Court or High Court, or attorney or pleader entitled to appear before the High Court.

(c) License under section 8

An application for the license under section 8 for the company is to be submitted to the Regional Director (Department of Company Affairs). The license essentially permits the word 'Limited' or 'Private Limited' to be deleted from name of the company. It could take upto 12 weeks after application to receive the license under section 8 of the Companies Act 2013. Pursuant to the application to the Regional Director (within seven days thereafter), the applicant company has to publish a notice in a newspaper[1] as to where the registered office is situated and a certified copy of the notice is to be filed with the Regional director. (Refer Appendix on Model Application by a New Association for Grant of License and Registration under section 8).

(d) Registration with the ROC

Registration certificate is normally granted within one month after filing for the section 8 license.

(e) Converting existing company to Section 8 Company

The Companies Act, 2013 also facilitates the conversion of an existing company to a non-profit company. The steps for conversion of an existing company into a Section 2013 Company are similar to that already discussed above.

Other miscellaneous points

- *Foreign Grants:* As in the case of a society and trust, a non-profit company is also required to get prior permission under the provisions of the Foreign Contribution Regulation Act before accepting foreign funds for its activities. Refer to the chapter on "Foreign Contribution" for detailed study on the procedures and requirements prescribed under the Foreign Contribution Regulation Act.
- *Foreign Director:* There is no bar under Indian law for a foreigner to be a Director in a Section 8 Company. (relevant permissions prescribed under the Foreign Exchange Management Act.)
- *Statutory Meetings:* Board meetings must be held regularly and Minutes should be maintained. Shareholders Annual General Meeting to be held with proper notice.
- *Registrar of Companies:* Changes in directors or office address are to be conveyed to the ROC. Audited accounts, annual report and an annual return have to be filed compulsorily with the ROC.

Case law

1. Where the main objects of the company were diffusion of useful knowledge, publication of journals, books, running of hostels, and promotion of search for truth, it has been held by the Karnataka High Court that the objects directly related to education[2] (as a non-profit, charitable activity). The MOA did not give any indication that the company was engaged in any business or trade as such. There was no other material on record suggesting any such inference.

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1. One in an English newspaper and another in one vernacular language.
2. *Ecumenical Christian Centre* v. *Commissioner of Income-tax,* (1983) 139 ITR 226 (Karn).

The company was therefore entitled to tax concessions applicable to it under the Income-tax Act, 1961.

2. In the case of *Nadir Pty Ltd.* v. *F.C. of T.*, (1973) 47 ALJR 303, the assessee was considered carrying on activities for the purpose of profit or gain to its individual members because if "a distribution of profits or gains were to take place upon a winding-up it would be within the power of the shareholders to direct the application of those profits or gains for their own benefit".

3. If the main object is the benefit of members (e.g. to enable members of a profession to practice their profession to greater advantage) this does not amount to a charitable purpose; *Chartered Insurance Institute* v. *London Corporation*, (1957) 1 WLR 867. The benefit to members may be "merely incidental and subsidiary".

MODEL APPLICATION BY A NEW ASSOCIATION FOR GRANT OF LICENCE AND REGISTRATION UNDER SECTION 8

From............................ Date............................

....

....

To,

The Regional Director

Application for Registration of a Company under section 8 of the Companies Act, 2013

Dear Sir,

We are desirous of incorporating our Association as a company with limited liability without the addition of the word "Limited" to its name. Enclosed herewith find the following documents for your consideration:—

1. Typewritten drafts of Memorandum and Articles of Association of the proposed company (in triplicate).
2. Declaration on a non-judicial stamp paper by a practicing chartered accountant regarding compliance with the provisions of the Act and Rules.
3. List of the names, descriptions, addresses and occupations of promoters and the particulars of directorships/responsible positions held by them in other Companies/Associations/Institutions (in triplicate)
4. Statement of assets and liabilities.
5. Note on work done or proposed to be done by the Association on registration.
6. Estimate of future annual income and expenditure (in triplicate).
7. Grounds on which the application is made (in triplicate)
8. Declarations of each of the promoters on non-judicial stamp paper.
9. Certified copies of the notices published in two newspapers.

10. Demand draft for ₹ 50 payable to the "Pay and Accounts Officer, Department of Company Affairs" being application fee.

A copy of the application alongwith enclosures is being endorsed to the Registrar of Companies (state here region) for recommendations.

Yours faithfully

Names, address & signatures of promoters

1.
2.
3.
4.

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NICE GIRLS ONLINE
NON-GOVERNMENTAL ORGANISATIONS
NEW GAMBLE ORGANISATION
NEW GREEN OR
Here's an easy question. What's the full form of 'NGO'?
Samapti

6
Comparative Analysis of Society, Trust and Non-profit Company

Factors which are crucial for effective functioning of an NGO include the range of activities, protection against take-overs, an NGO's certainty of legal status and adequate legal protection in order to operate freely in different countries amongst other factors.

Where an NGO contemplates:

(a) Global access and international networking;

(b) substantial amounts of money to be involved in the funding process;

(c) life span of the organisation and its activities are approximated to 50 years at the first instance – the NGO can be formed as a non-profit company as a first option. No doubt a trust and society are equally efficient platforms for one's non-governmental, charitable, religious activities. Refer to Chapter 2 and Chapter 3 for discussions on society and trust.

Advantages and disadvantages of a non-profit company

The formation and management of a company is mired in complex legal procedures prescribed by the voluminous Companies Act, 2013.

Wide range of activities is possible. Objects can be modified.

Full legal status and worldwide legal protection is available to a company.

If a private company is formed, prevention of takeovers is effective (restricted transferability of shares). Voting is based on the number of shareholders. A company cannot be, therefore, taken over without a majority of shares.

No commercial image, as the words 'Private Limited' can be dropped under section 8 license.

Advantages and Disadvantages of a Trust

The objects are clearly spelt out by the donor/author in the trust deed as also his intention to transfer the trust property and the beneficiaries are described therein. Difficult to modify the objects in the event of death of the author.

Trusts do not have an absolute legal entity in the international scenario as some countries do not recognize trusts as a valid form of organization.

Advantages and Disadvantages of a registered society

A wide range of activities is possible and objects can be modified.

Societies have an independent legal status in India. As in the case of trusts some nations do not recognise the body of society as a legal entity.

Chances for takeovers are high in case of a society.

Comparative Analysis of Society, Trust and Non-Profit Company

Company	*Society*	*Trust*
Statute/legislation Companies Act, 2013	Societies Registration Act, 1860	Bombay Public Trusts Act, 1950
Jurisdiction Registrar of companies (or Charity Commissioner as in Maharashtra)	Registrar of Societies	Charity Commissioner
Objects Non-profit Activities	Charitable, Literary, Scientific etc.	Charitable, Socially Beneficial
Main document Trust Deed	Memorandum of Association and Articles of Association, Rules and Regulations (Bye-laws)	Memorandum and Articles of Association
Alteration of Objects Complex legal procedure	Simple procedure	Bound by Covenants of Trust Deed; Normally only Settlor can modify and is almost always impossible to modify if settlor is deceased
Formation Complex Procedures; three to six months required	Simple and easy	Simple and easy
Number of members required Minimum seven and no upper limit	Minimum seven and no upper limit	Minimum two and no statutory limit
Registration As a company under section 8 of the Companies Act, 2013	Both as a society and a trust in some States *e.g.* Maharashtra	As trust

Company	*Society*	*Trust*
Stamp duty No stamp paper required for Memorandum of Association and Articles of Associations	No stamp paper required for Memorandum of Association and Rules and Regulations	Trust required to be executed on non-judicial stamp paper (valued at 4% of the trust property)
Name Prior approval required from the Registrar of Companies in the relevant State/U.T.	Comparatively simple	Comparatively simple
Board of Management Board of Directors/ Managing Committee	Governing Body	Trustees
Management Formalities of company law in terms of the Companies Act, 2013 to be observed	Few restrictions imposed under the Act	Very few restrictions imposed under the Act
Mode of succession in the management Usually by election by members	Usually by election by members	By appointment
Meetings To be held as per provisions of company law which are quite extensive	Annual Meeting according to provisions of law. Governing body meetings as prescribed in Rules of the Society	No provisions laid down
Penalties Various offences and corresponding penalties for violations have been provided	Few offences and penalties have been prescribed	Very Negligible
Legal Status Full legal status	Legal status with certain limitations	Legal status with certain limitations
Statutory Regulation Exhaustive but mature	Very limited	Nominal
Transfer of membership Totally free or controlled, as desired	Not possible	Not applicable
Admission of new members Controlled by general body or Board through issue of capital	Controlled by Governing Body	Not applicable

Company	Society	Trust
Removal of members Not possible without consent	Possible without consent	Not applicable
Dissolution or take-over by State Very difficult	Possible	Possible
Payment to members As approved by Trust deed	Not restricted	As specified in Trust

Features of Society v. Trust

Company	Society	Trust
Objects	Charitable, literary, scientific, others	Non-profit activities
Formation	Procedure is simple and easy	Procedure is complicated
Name	Selection of name is not difficult	Name approval by Registrar of Companies
Management	Easy and simple and not much restrictions imposed under the Act	Provisions of the Companies Act have to be complied with and are complex, rigid and time consuming
Meetings	Annual meeting of society has to be held as per provisions in the Act. Meeting of the Governing Body are held as prescribed in the Rules of the Society	All the meetings are to be held as per provisions of the Companies Act, 2013
Penalties	Very few offences and penalties have been prescribed	Provisions under the Companies Act are more stringent and attract penalties
Reputation	Registered societies enjoy same reputation as companies	Same
Legal entity	Registered Society is a legal entity with certain limitations	Is a legal entity.



Part C

Management of an NGO

7

Registration of An NGO

Registration enables an NGO to be transparent in its operations to the Government, Donors, to its members and to its target community. A Social Service Organisation or an NGO can be registered as a Society or as a Trust or also as Non-Profit Company (NPC). An NGO cannot say it is registered under a statutory authority merely by applying for registration, and thereafter filing the prescribed documents. The qualification can be claimed only when the name of the applicant NGO is formally entered in the prescribed Register by the Registrar of Trusts and/or Societies.

Registration of a Society

The Societies Registration Act, 1860 is a Central Act with State modifications (*e.g.* Karnataka Societies Registration Act, 1960, Tamil Nadu Societies Registration Act, 1975). Requirements vary from State to State. Mostly, an NGO must file the following documents with the Registrar of Society:

1. A copy of the Memorandum of Association duly signed by seven or more persons,
2. A copy of the Rules and Regulations of the society certified as correct by not less than three members of the governing body.

Prescribed fee is to be paid for registration. Pursuant to the filing of these documents and payment of fees, the Registrar certifies under his hand that the society is registered under the Act.

Requirements: Any seven or more persons associated for any literary, scientific or charitable purpose (or for other specified purposes). The Memorandum of Association must contain the following:

1. The name of the society.
2. The object of the society.

The name, address and occupations of the governors, council, directors, committee or other governing body to whom by the rules of the society the management of its affairs is entrusted.

The following Societies may be registered under the Act:

1. Charitable Society.

2. The military orphan funds or societies established at the several presidencies of India.
3. Societies established for:—
   a. The promotion of science, literature or the fine arts.
   b. The instruction, the diffusion of useful knowledge or the diffusion of political education.
   c. The foundation or maintenance of libraries or reading rooms for general use among the Members or open to the public or public museums and galleries of paintings and other works of Art collection of natural history, mechanical and philosophical inventions, instruments or designs.

Guidelines for registration of a society in Delhi have been provided under the Appendix "Guidelines for Registration of a Society under the Societies Registration Act, 1860 as applicable to the NCT of Delhi".

Status of a registered society: A registered society is viewed as an independent juridical 'person'. It is different from the people who form it. The registered society can—

1. Purchase and hold property.
2. File cases.
3. It has perpetual succession.
4. It can get exemption from income tax.
5. It has limited liability.
6. Any property held can pass from one generation to another without having to pay any transfer fees or taxes and without any cumbersome documentation.
7. The properties of an incorporated body can be more easily protected from rival claimants and resulting litigations.

Property which is vested in the members of an unregistered society becomes "property belonging to the society" after registration, and there is no transfer of ownership[1].

A society registered in India and having all of its members as foreigners is still an 'Indian' society and governed by Indian laws. Conversely when registered outside and all members are Indian then the society is a foreign society.

Unregistered Society

An unregistered society is not recognised as an independent juridical person under law. Therefore, it does not enjoy the benefits (listed above). Failure to register the institution gives it no legal face and only the trustees in charge of the fund have a legal status. A promissory note executed in favour of the institution in this event is void and no suit can be instituted to enforce it on behalf of the institution[2].

1. *Harinarayan Shaw* v. *Gobardhandas Shroff*, AIR 1953 Cal 140: (1952) 89 Cal LJ 84.
2. *Jamoodas Devidas Chawre* v. *Chawre Digambar Jain Boarding*, AIR 1934 Nag 207.

Limited Liability

A registered society has limited liability. (Section 8 of Societies Registration Act, 1860; *K.C. Thomas* v. *R.L. Gadeock*, AIR 1970 Pat 163: 1969 Pat LJR 438: 1969 BLJR 942 'Limited liability' means that the liability of the society is limited to assets of the society. The liability does not extend to personal assets of its members or Governing Body.

GUIDELINES FOR REGISTRATION OF A SOCIETY UNDER SOCIETIES REGISTRATION ACT, 1860, AS APPLICABLE TO N.C.T. OF DELHI

The Societies Registration Act, 1860, as its preamble shows, has been enacted to make provisions for improving the legal conditions of societies established for the purposes given under sections 1 to 20 of the Act. A society registered under this Act, acquires the legal status and is also capable to sue and be sued under section 6 of the Act.

1. The purposes given under section 20 of the Act are charitable societies, military, orphan funds or societies established for the promotion of science, literature or fine arts, for instruction, diffusion of useful knowledge, the foundation or maintenance of libraries or reading rooms for general use among the members or open public museum and galleries of paintings and other works of art, collection of natural history, collections of instructions or designs, promotion of social welfare, sports, games, activities conducted to the protection and improvement of natural environment (including forests, lakes, rivers, wild life and compassion for living creatures).
2. Only the societies formed for the purposes laid down under sections 1 to 20 of the Act and having those purposes as their aims and objects may be registered under the Act.
3. Name of the society should be such as does not attract the provisions of 'Names and Emblems (P.I.U.) Act, 1950'. The name proposed should not suggest or be calculated to suggest, the patronage of the Government of India or the Government of State or connection with any legal authority under any law for the time being in force.
4. The Names and Emblems Act, 1950 prohibits the use of any name, emblems, official seals, colourable imitation thereof as specified in the Act, without previous permission of competent authority. It also prohibits the use of name of National Heroes and other names, etc., mentioned in the Act. The societies are therefore advised to consult this Act also before proposing the name etc., for registration.
5. Further, if the proposed name is identical with that by which any other society has been registered or nearly resembles such name as to likely to deceive the public or the members of the society, such names may not be registered.
6. Two main separate documents are required to be filed under section 2 of the Societies Registration Act, 1860 for registration of a society which are listed below and those should be necessarily filed in duplicate:

(i) Memorandum of Society, and

(ii) Rules and Regulations.

7. Memorandum of the society defines the permitted range of its enterprises. The aims and objects for which the society is formed have to be incorporated in the memorandum.
8. The Society should carefully understand the aims and objects incorporated in the Memorandum.
9. Desirous persons or the persons subscribing the names of the Memorandum should not be (in any case) less than seven. If it is proposed to give All India character to the society there must be minimum of eight different persons from different States of Indian Union to the Memorandum.

Memorandum of a Society may be prepared according to the Model Form, given below:

1. Name of the Society : Name of the Society shall be ....

2. Registered Office : The Registered Office of Society shall remain in the National Capital Territory of Delhi, and at present it is at the following address:......................................

3. Aims and Objects : The Aims and Objects of the society, for which the above society is established, are as under:

(a)

(b)

(c)

(d) .... and so on.

Important Note.—Add the following clause in Memorandum of Society, after completing the Aims and Objects of the Society.

All the incomes, earnings, movable or immovable properties of the Society shall be solely utilized and applied towards the promotion of its aims and objects only as set forth in the Memorandum of the society and no profit thereof shall be paid or transferred directly or indirectly by way of dividends, bonus, profits or in any manner whatsoever to the present or the past members of the society or to any person claiming through any one or more of the present or the past members.

No members of the Society shall have any personal claim on any movable or immovable properties of the society or make any profits, whatsoever, by virtue of this membership.

4. Governing Body : The Name, Address, Occupation and Designations of the present members of the Governing Body, to whom the management of Society is entrusted, as required under section 2 of Societies Registration Act, 1860 as applicable to the National Capital Territory of Delhi, are as under:

S.No.	Name and Address (in capital letters)	Occupation and Designation (in Societies)	
1.	....	....	....
2.	....	....	....
3.	....	....	....
4.	....	....	....
5.	....	....	....
6.	....	....	....
7.	....	....	....

.... as so on

5. Desirous persons : We, the undersigned desirous of forming a society named .... under Societies Registration Act of 1860, as applicable to National Capital Territory of Delhi, in pursuance of this Memorandum of the Society:

S.No.	Name and Address	Occupation	Signature
1.	....	....	....
2.	....	....	....
3.	....	....	....
4.	....	....	....
5.	....	....	....
6.	....	....	....
7.	....	....	....

.... as so on

Note.—(i) The Memorandum should close after clause No. 5 given in the above model form.

(ii) All signatures of the desirous persons or subscribers given in the Clause No. 5 of the Memorandum, must be witnessed by an oath Commissioner, Notary Public (₹ 3 Notarial Stamps Affixed), Gazetted Officer, Advocate, Chartered Accountant or any I Class Magistrate with their Official Rubber Stamp and complete in all respects.

(iii) The names of the persons mentioned in the Clause No. 4 of the Model of the Memorandum must necessarily be included under Clause No. 5 (*i.e.*, in the list of the Desirous Persons or the Subscribers to the Memorandum). This is to say that the members of the Memorandum cannot be from the outside of the Desirous Persons/Subscribers to the Memorandum. This is an essential requirement.

Rules and Regulations

For carrying out the Aims and Objects given by the Memorandum and for internal management of the society, rules and regulations may be made by

the Society and these rules are known as the Rules and Regulations of the Society. The Rules and Regulations of the Society must be filed alongwith the Memorandum with the Registering Authority for the purpose of the Registration of the Society. If the Rules and Regulations of the Society are inconsistent with the provisions of the Act, they are invalid and the fact that they are filed with the Registering Authority for the purpose of registration cannot make them valid. Following titles should necessarily be mentioned in the Rules and Regulations of the Society.

1. Name of the Society
2. Membership defined
3. Admission and Qualification for Membership
4. Admission fee and Subscription
5. Cessation of the Membership
6. Appeal and Re-admission of Members
7. Rights and Privileges of Membership
8. General Body:
   (i) General Body Defined
   (ii) Powers, duties and functions of General Body
   (iii) Notices and Periodicity of Meetings
   (iv) Quorum of the Meeting
9. Managing/Governing Body:
   (i) Governing Body Defined
   (ii) Minimum and Maximum Strength of Governing Body
   (iii) Composition
   (iv) Election and its Mode
   (v) Terms of the Office of the Governing Body
   (vi) Powers and Duties of the Office Bearers
   (vii) Notice and Periodicity of Meetings
   (viii) Quorum of the Meetings
   (ix) Filling up Casual Vacancies
10. Sub-Committee:
    (i) Formation
    (ii) Composition
    (iii) Duties and functions
11. Sources of income and utilisation of funds
12. Financial Year
13. Audit of Accounts
14. Operation of Bank Accounts

15. Annual List of Managing/Governing Body (Section 4):

    Once in every year a list of the office bearers and members of Governing Body of Society shall be filed with the Registrar of Societies, Delhi, as required under section 4 of the Societies Registration Act, 1860, as applicable to National Capital Territory of Delhi.

16. Legal proceedings (Section 6):

    The Society may sue or be sued in the name of the President and/or Secretary as per the provisions laid down under section 6 of the Societies Registration Act, 1860, as applicable to National Capital Territory of Delhi.

17. Amendment:

    Any amendment in Memorandum, Rules and Regulations will be carried out in accordance with sections 12 and 12A of the Societies Registration Act, 1860, as applicable to National Capital Territory of Delhi.

18. Dissolution and Adjustment of Affairs:

    If the Society needs to be dissolved, it shall be dissolved as per provisions laid down under sections 13 and 14 of the Societies Registration Act, 1860, as applicable to the National Capital Territory of Delhi.

19. Application of the Act:

    All the provisions under all the sections of the Societies Registration Act, 1860, as applicable to National Capital Territory of Delhi, shall be applicable to this society.

20. Essential Certificate:

    Certified that this is the correct copy of the Rules and Regulations of the above society.

Sd/-	Sd/-	Sd/-
(Treasurer)	(Secretary)	(President)

INSTRUCTIONS

1. Two documents for registration *viz.*, Memorandum of Society and the Rules and Regulations should separately be typed neatly and properly with separate page making.
2. Durable white paper should be used for typing as the documents are for permanent record.
3. At least one-and-half inch margin must be on left side and one inch from right side of each sheet of thick paper, each paper should be typed in double space and on one side only.
4. The aims and objects given under clause 3 of the Memorandum should not be repeated in the Rules and Regulations.
5. The activities of the programmes of working direction towards attainment of the aims and objects of the society should not figure in the Memorandum.

6. Specific language given in the guidelines for particular clause may be adopted while preparing the documents.
7. In case of management or reference to a particular existing places of worship like Mandir, Masjid, Gurudwara, Church or the Bodh Vihar, etc., is involved, sufficient documentary proof is required that the Society is legally competent for the same.
8. An affidavit on Rs. 2 Non-Judicial Stamp Paper, from the President or Secretary of the Society, should be furnished regarding the relationship between/amongst the subscribers (desirous persons) to the Memorandum as are given under Clause 5 of the Memorandum and also an undertaking to the name of the Society will be changed if the said name already found registered in the office of the Registrar of Societies, Delhi.
9. Affidavit must be attested by the Oath Commissioner/Notary Public (Rs. 3 Notarial Stamp affixed thereon) or by the Ist Class Magistrate.
10. The documentary proof in the shape of Sale Deed/Lease Deed/General Power of Attorney (GPA) alongwith the Electricity Bill/Ration Card.
11. An Allotment Letter in case of Government Quarter, in respect of premises shown as registered office of the Society under Clause 2 of the Memorandum should also be furnished alongwith No Objection Certificate from the owner of the premises on Rs. 2 Non-Judicial Stamp Paper duly signed by deponent and duly attested by any Notary Public or Oath Commissioner or Ist Class Magistrate.
12. Rs. 50 (Rupees fifty only) as the Registration fee of the Society shall be demanded when the formalities are completed and Registrar of Societies, Delhi has approved the case.
13. Ration Card/Election I. Card/any other identity proof is required in respect of all desirous persons.
14. Signature of three office-bearers are required on each and every page of Memorandum of Association, Rules and Regulations on both the sets.

(Specimen of affidavit which should be given by President or the General Secretary who is representing the Society for registration)

AFFIDAVIT

I, ... S/o W/o D/o.. R/o............................ do hereby solemnly affirm and declare as under:

1. That I am the President/General Secretary of the proposed society, namely ....
2. That the Desirous Persons of the above Society are not related to each other by way of blood relation or otherwise.
3. That the name of the proposed Society is not identical or resemble to any other registered/unregistered Society in our locality as per my knowledge.
4. That if the name of this society was found attracting the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950 and/or identical or resembling close to any other Societies which are already registered under Societies Registration Act, 1860 in the National Capital Territory of Delhi and other law of land applicable to them and the Registration so granted shall be deemed to have

been withdrawn/rescinded under the general law, if the Society fails to change the name within given time to do so by the Registrar of Societies, Delhi.

Deponent.......................

VERIFICATION

Verified at Delhi, on this......... day of........... 20....... so that the contents of this affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Deponent.......................

(Specimen of affidavit given by owner of premises)

AFFIDAVIT/N.O.C.

I,.............................S/o/W/o/D/o.. R/o ....
do hereby solemnly affirm and declare as under:

1. That I am the legal owner/General Power of Attorney Holder/allottee and in possession of the premises/property bearing No. ....
2. That I shall have no objection if the Registered office of the society named .... shall be situated at my above premises.

Deponent ....

VERIFICATION

Verified at Delhi, on this .... day of .... 20....... that the contents of this affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Deponent ....

Note.—

(i) Do not type which is not applicable.

(ii) The above both affidavits are to be separately executed on ₹ 2 Non-Judicial Stamp Paper, which are to be duly signed by the deponent and also attested by any Notary Public (with ₹ 3 Notarial Stamp)/Oath Commissioner/Ist Class Magistrate.

(iii) Any proof (regarding address verification) of all the office bearers and also the executive members of Governing Body of the society should be submitted with the file for registration.

(iv) Attested copy of legal documentary proof is required in support of both Affidavits

Why Register an NGO

Effects of registration	Effects of non-registration
Existence: Exists in fact and in law.	Exists only in fact and no legal existence.
Legal identity for Society: The Society is a legal entity apart from the members	Not a legal entity and has no legal identity disjoint from its members for any purpose
Legal status of members: All members have their respective individual legal identities which is disjoint from that of the Society and each other	The legal identities of the individual members — identity of the society. Society has no legal identity of its own
Property rights: Can acquire and hold property in its own name	Cannot purchase or own property in its own name
Right to sue and liability to be sued: Society can validly initiate and contest a suit in its name against a third party and *vice versa,* a third party can sue the Society itself	Cannot sue a third person as a Society. And again, an action is not maintainable against the Society – it should be in fact an action against each member thereof and maintainable against them only
Income–tax benefits: In terms of the relevant provisions of the Income-tax Act, 1961 can claim benefits thereunder.	Cannot claim benefits under the Income-tax Act.

Registration of a Charitable Trust

(Indian Trusts Act, 1882)

Minimum 2 members can join and start a Trust. A Trust Deed is to be submitted to the Registrar of the registration District.

Registration as a Non-Profit Company

(Under section 8 of the Companies Act, 2013)

A minimum of 2 persons can start a non-profit company and apply for a license with regional Director of the Department of Company Affairs, Ministry of Finance, GOI. These companies are registered without the name as Private Limited Company.

Code of operation for registered Body

A Registered Society and Trust is required to function in a composite legal manner consistent with the provisions of registration: Thus the following code of behaviour is expected of registered Societies and Trusts:

- Activities should be as per their bye-laws or MOA;
- Statutory meetings of the Governing Body/General Body meetings should be conducted as prescribed in the Registration Act;
- Minutes book should be maintained;

- Financial transactions to be audited and audit report submitted to registration authority annually.

Registration of an NGO under other Acts

NGOs registered under certain other Acts entitles the NGO to several benefits.

Registration under Income-tax Act, 1961

The NGO is entitled to exemptions on tax. [General Charitable Institutions, section 10(23c)(iv) only].

NGOs Registered under Foreign Contribution (Regulation) Act, 1976

(Refer Chapter on "Foreign Contribution" for discussion on the FCRA requirements to be fulfilled by an NGO.) This Act regulates the acceptance of any foreign grants to NGOs. The applications should be sent in Form FC – 8 along with registered documents to Ministry of Home Affairs, New Delhi. A prior permission could also be taken on a case to case basis.

Requirements:

(a) Existence of the NGO for minimum of 3 years;

(b) No previous official remark regarding the use of foreign funds without prior permission under FCRA;

(c) Proof of previous 3 years' activities.

Foreign Exchange Management Act

This Act repealed FERA (Foreign Exchange Regulation Act, 1973) and was enacted in the year 1999 in the light of subsequent development in relation to foreign contributions and foreign funds. Specifically, since 1993 there is substantial increase in foreign transactions and foreign receipts, current account convertibility and participation of foreign institutional investors in profitable and non-profitable organisations like NGOs, in new arena of their foreign exchange transactions. The NGOs those dealt with FERA are transitioning in new procedures after the enactment of FEMA.

The Act defines under its section 2 besides other terms some terms in relation to foreign contribution or dealings like:

(n) "foreign exchange" means foreign currency and includes—

(i) deposits, credits and balances payable in any foreign currency,

(ii) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,

(iii) drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency;

(o) "foreign security" means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed

in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency;

(u) "person" includes—

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals, whether incorporated or not,

(vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and

(vii) any agency, office or branch owned or controlled by such person;

(v) "person resident in India" means—

(i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include—

(A) a person who has gone out of India or who stays outside India, in either case—

(a) for or on taking up employment outside India, or

(b) for carrying on outside India a business or vocation outside India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) a person who has come to or stays in India, in either case, otherwise than—

(a) for or on taking up employment in India, or

(b) for carrying on in India a business or vocation in India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

(ii) any person or body corporate registered or incorporated in India,

(iii) an office, branch or agency in India owned or controlled by a person resident outside India,

(iv) an office, branch or agency outside India owned or controlled by a person resident in India;

(y) "repatriate to India" means bringing into India the realised foreign exchange and—

(i) the selling of such foreign exchange to an authorised person in India in exchange for rupees; or

(ii) the holding of realised amount in an account with an authorised person in India to the extent notified by the Reserve Bank,

and includes use of the realised amount for discharge of a debt or liability denominated in foreign exchange and the expression "repatriation" shall be construed accordingly;

(z) "Reserve Bank" means the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);

(za) "security" means shares, stocks, bonds and debentures, Government securities as defined in the Public Debt Act, 1944 (18 of 1944), savings certificates to which the Government Savings Certificates Act, 1959 (46 of 1959) applies, deposit receipts in respect of deposits of securities and units of the Unit Trust of India established under sub-section (1) of section 3 of the Unit Trust of India Act, 1963 (52 of 1963) or of any mutual fund and includes certificates of title to securities, but does not include bills of exchange or promissory notes other than Government promissory notes or any other instruments which may be notified by the Reserve Bank as security for the purposes of this Act;

(zb) "service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, medical assistance, legal assistance, chit fund, real estate, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

The Act deals with the holding of foreign exchange not current account transaction under section 4 and 5 *viz.*:

4. Holding of foreign exchange, etc.—Save as otherwise provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

5. Current account transactions.—Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction:

Provided that the Central Government may, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.

Under the Act the Director of Enforcement and other Senior Officers have power to search any seizure if there is any contravention of any provisions in receiving the foreign exchange.

This Act (FEMA) has repealed FERA, 1973 and dissolved the Appellate Board constituted under FERA.

FORM OF APPEAL UNDER FEMA (ADJUDICATION PROCEEDINGS AND APPEAL RULES), 2000

FORM I

(*See* rule 5)

FORM OF APPEAL

From

(Mention the name and address of the applicant here).

To

The Special Director (Appeals)

(Address)

Sir,

The applicant named above, begs to prefer this appeal under section 17 of the Foreign Exchange Management Act, 1999 against Order No. .... dated .... passed by the Adjudicating Authority under the said Act on the following facts and grounds.

FACTS

(Mention briefly the facts of the case here. Enclose copy of the order passed by the Adjudicating Authority and copies of other relevant documents, if any.)

GROUNDS

(Mention here the grounds on which the appeal is made.)

PRAYER

In the light of what is stated above, the applicant prays that he/she/it may be granted the following relief.

RELIEF SOUGHT

(Specify the relief sought)

The fee of ₹ .... for this appeal has been deposited in ....*vide* Receipt No. ....dated.................
....20...... .

Place...............................

Date.........................20......

(Signature of the applicant or his Authorised representative)

List of documents attached:

(Signature of the applicant or his Authorised representative)



8

RECOMMENDED CODE OF PRACTICE FOR INDIAN NGOs

Legal Regulations Related to Volunteering

Every act or omission of a volunteer and or a person working for and on behalf of an NGO is governed by law no matter how noble the crusade or free of cost the services or advice offered. It is of course a different matter altogether when the volunteer is not under an obligation to provide services which he is providing "voluntarily" - the legal arm cannot force a volunteer to be more generous with the quantity of his resources of time, effort and money - nor dictate the manner for use thereof as long as there is no misuse or illegality. Described below is a break-up of the main components of identity, functions of an NGO as an organisation and the individuals who work therein tagged with their rights, duties and liabilities for violation thereof for fund-raising, service provision or grant-making.

Rights, Duties and Liabilities of the Organisation

• *Identity Issues*

Registration: Registration of an NGO is not mandatory. However in view of the legal benefits of registration *vis-à-vis* the ill-effects of non-registration[1], an NGO is registered as a matter of course. Registration gives the society a legal status and is essential for: (a) opening bank accounts; (b) obtaining registration and approvals under the Income-Tax Act, 1961; (c) lawful vesting of properties of societies and (d) recognition to the society at all forums and before all authorities. (Refer Chapter 7 for detailed notes on registration of a society for registration of a trust and for registration of a non-profit Section 8 Company under the Companies Act, 2013).

Membership: A person is a member of a society in the terms and manner enumerated in the Memorandum of Association of the Society. However, upon dissolution of a Society, the members are required to vacate their membership notwithstanding that their term of membership has not expired. Suits instituted by or against the member do not abate even subsequent to his death.

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1. Refer Table given under Chapter 7 "Registration", enumerating effects of registration versus non-registration of a society in terms of the Societies Registration Act, 1860.

• ***Functioning Issues***

Legal Objective: An NGO can be formed only with a legal objective in mind. Thus, there can be no society, trust of company for the promotion of communal disharmony, armed robbery and prostitution.

Obligation for management of the affairs of NGO: The general superintendence, direction, control and management of the affairs of the NGO vests with the Governing Body/Board of Directors and in certain instances of mismanagement, fraud etc. amounting to a legal offence – the members of the Governing Body/ Directors have a personal responsibility.

Use of Funds/Grants/Aid – An NGO is obligated to spend the monies raised, received, accumulated only on furthering the objects of its mission. Further charity fund raisers face accountability for ensuring that funds were used for the purpose stated. Also refer Chapter on "Indian Laws and NGOs" for an overview of the various offences and penalties for violation of statutory duties by NGOs.

Contractual rights: The NGO can validly enter, negotiate and conclude a contract with third parties in connection with sale, supply, distribution, hire-lease or other transactions with an aim to achieve its objectives.

Property rights: A company is a body corporate and with a common seal and the power to contract and power to acquire, hold and dispose off property both movable and immovable. Any member having in his possession, custody or control any property of the society, trust or body, wrongfully withholds such property; or wrongfully obtains possession of, or retains, any property forming part of any undertaking of the Society, trust or body or wilfully withholds or fails to furnish any documents relating to such undertakings which may be in his possession, custody or control, or fails to deliver any assets, books of account, registers or other documents in his possession, custody or control relating to the undertakings of the Society, trust or body; or wrongfully removes or destroys any property forming part of the undertakings of the Society, trust or body, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both.

Vesting Rights: The undertakings of the Society, trust and body that form part of, or are relatable to the Society, and the right, title and interest of the Society, trust and body, in relation to such undertakings, can be transferred to another body in accordance with its Memorandum of Association. The undertakings vested may include all the assets, rights, leaseholds powers, authorities and privileges and all property (movable and immovable), including lands, buildings, works, workshops, projects, stores, instruments, machinery automobiles and other vehicles, cash balances, funds, including reserve funds, investments and book debts of the Society, trust or body as form part of, or are relatable to, the Society, trust or body and all other rights and interests arising out of such properties in the ownership, possession, power or control of the Society, trust or body whether within or outside India, and all books of accounts, registers, maps, plans and all other documents of whatever nature relating thereto. All properties and assets. Pursuant to vesting of properties as aforesaid, a licence or

other instrument granted to the Society, trust or body in force, may continue to be in force for the same purposes and for the same term of the licence.

Suing and being sued: A registered NGO can sue and be sued for a legal wrong. A suit, appeal or other proceeding, of whatever nature, in relation to any property or asset of the NGO, instituted or preferred by or against the Society, trust or body which is pending, does not abate even after dissolution of the NGO and it cannot be discontinued or prejudicially affected in any way, on account of the dissolution or transfer. (Refer Chapter 7 for notes on legal action by or against a registered NGO).

Duty to furnish returns: Statutory returns, particulars and statements are required to be filed from time to time. (Refer Chapter on "Taxation" for accompanying penalties for failure to furnish returns).

Duty to maintain accounts: Duty to maintain proper accounts and relevant records, prepare annual statement of accounts, income and expenditure account, balance sheet. Any member of the management, who, has in his possession or under his control, any books, documents or other papers relating to the NGO is liable to account for the said books, documents or other papers to the NGO.

Borrowing Powers

The Governing Board has power to borrow on the security of the properties of the society or any other asset for carrying out the objectives of the NGO.

Rights, Duties and Liabilities of NGO worker

Indian Law on volunteering: There is no exclusive legal framework for volunteering or voluntary work in India. In most cases, there is no legal coverage for volunteering. In large voluntary organisations (e.g. Red Cross Doctors) who send their volunteers for missions abroad, an individual contract is signed between the organisations ("employer") and the volunteer ("employed")

(i) *No Profit motive:* The criterion for voluntary work is work that does not compete with paid work or doesn't aim for profit.

(ii) *Expenses incurred by the volunteer:* Expenses linked to his/her voluntary work are usually reimbursed to the volunteer by the organisation he/she works for. These costs include: phone calls, stamps, copies and travel expenses.

(iii) *Salary:* A volunteer can receive a fixed amount, without justification of any kind from the volunteer or his/her organisation, whether the volunteer works in one or several organisations.

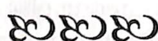
(iv) *Insurance:* Any voluntary organisation should insure its volunteers for physical or material damage occurred during their voluntary work. In the case of damage caused to someone else during voluntary work, the victim can claim compensation collectively from the voluntary organisation and personally from the volunteer that has caused the damage. When the organisation is a commercial one, the board members are personally responsible for financial compensations. Voluntary organisations are usually not profit-oriented. So board members are normally personally

responsible only when they act beyond their missions/abilities or when they do anything illegally. Accident insurance provides insurance to volunteers working regularly in the health, veterinary, rescue, life-saving and catastrophe service sectors.

(v) *Confidentiality of information obtained in course of work:* Various statutes discourage disclosure of certain information obtained by professionals in the course of their work. It would bode well for NGOs collecting data and information in respect of any industry or commercial concern to obtain consent[1] of the owner for disclosure of the information collected from his commercial concern or industrial concern. Doctors and lawyers are expressly prohibited by statutes from disclosure of personal information of their patient or client respectively, and this obligation continues even after the duration of medical attendance or employment of services as the case may be.

(vi) *Norms for entry into private premises:* Law protects the privacy and inviolability of family life, modesty of women, aged and infirm. In view of this, entry by over zealous NGO workers into dwelling houses, building or private premises by strangers is prohibited (except with consent of owner or where authorised by law). Sections 55(1) and 62(1) Code of Civil Procedure, 1908, section 26, Slum Areas (Improvement and Clearance) Act, 1956, section 246 of the Cantonments Act, 1924 provide that entry when permitted is further regulated in terms that such 'visits', should be made during the daytime, at reasonable hours, with consent of owner of the premises, with due regard to the social and religious customs and usages of the occupants[2]. All other forms of entry can amount to house trespass which is an offence under section 442 of the Indian Penal Code, (45 of 1860) and punishable under section 448 of the Code. *No vexatious and unnecessary entrance*: Vexatious and unnecessary entrance, search of the dwelling house, seizure of personal property of anybody are all punishable activities in terms of the Opium Act, 1878, Indian Forest Act, 1927, Ancient Monuments Preservation Act, 1904. It goes without saying that all the above rights to privacy are not absolute and are balanced *vis-à-vis* prevention of crime.

(vii) *Nuisance:* NGOs who prove themselves to be a 'nuisance' as recognised by law *i.e.* causing discomfit to the public are liable to face legal action and in this regard prudence calls for no obscene act, song or word to be said within public hearing to the annoyance of others, which is punishable in terms of section 294 of the Indian Penal Code, (45 of 1860).



1. Some statutes which prescribe consent in collecting and disclosure of information *vis-à-vis* commercial undertakings are Tariff Commission Act, 1951 (section 22); the Collection of Statistics Act, 1953, section 7.
2. Section 248, Cantonment Act, 1928.

9

FOREIGN CONTRIBUTION

Prior Permission always: The FCRA requires all Indian NGOs that receive foreign contributions[1] to receive clearance from the Ministry of Home Affairs, in the form of either permanent FCRA registration or prior permission on a case to case basis.

If a foreign donor agency opens a branch office in India, the Indian office needs FCRA registration or prior permission. Further, the second, third, fourth, fifth and all the subsequent receivers of foreign funds need FCRA registration or prior-permission. It is said that the colour of money never changes and in this regard it is interesting to note that the foreign funds remain 'foreign' in the hands of an NGO at all times, its foreign origin does not change with transfer. It is only when it is spent or given to individual beneficiaries that the funds become Indian. An NGO would need prior permission in the following four situations:

- The NGO does not have permanent FCRA registration;
- The FCRA number has been cancelled by the Government;
- The NGO has been asked to get prior-permission under section 10(b);
- The FCRA number is 'frozen' due to change in Governing Body.

FCRA conditions for accepting foreign funds

An NGO seeking to receive foreign funds is statutorily required to do the following:

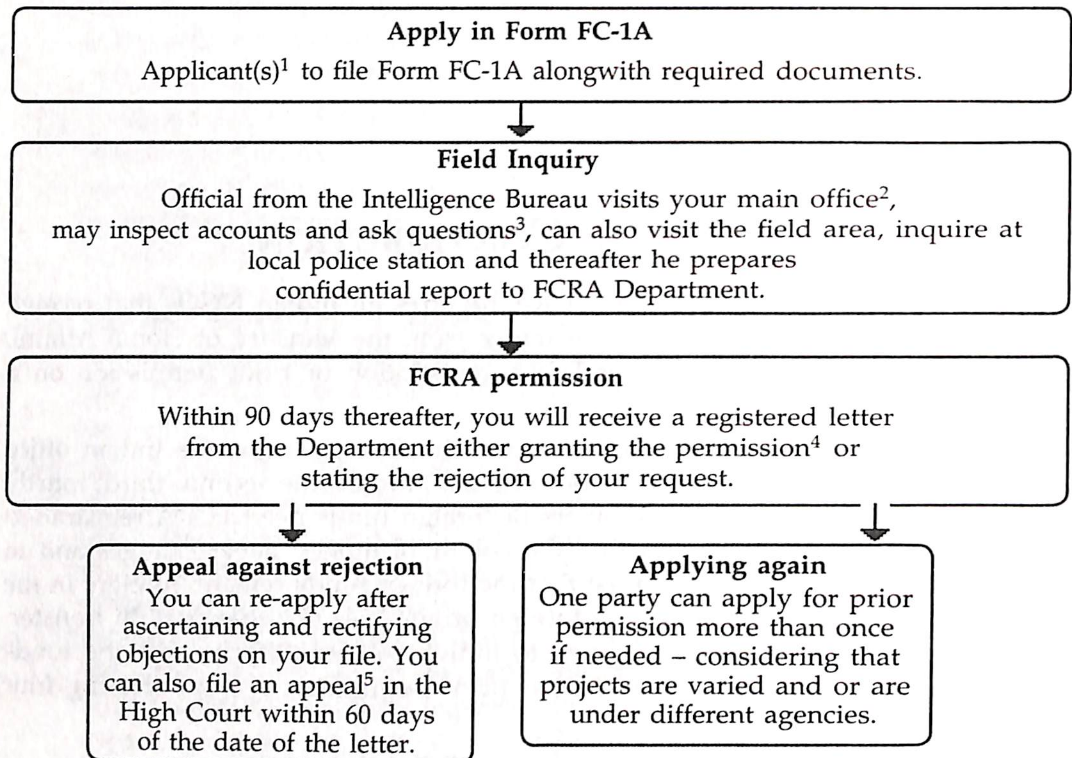
(a) Register with the Central Government;

(b) Intimate the Central Government of (i) the amount of each foreign contribution received by it; (ii) source; (iii) manner in which foreign contribution is to be received; and (iv) purposes for which and the manner in which such foreign contribution is to be utilised by it.

Those NGOs which are not registered with the Central Government can accept foreign contribution only after obtaining the prior permission from the Central Government and should also give intimation to the Central Government as the registered association does.

1. Foreign contribution includes donation, delivery or transfer made by any foreign source of any article or currency or foreign securities (Foreign Exchange Management Act).

The procedure for obtaining prior permission from the FCRA is as follows:



When FCRA permission is not needed:

Prior permission from the FCRA is not required for receiving amounts in the following forms:—

(a) salary, wages or other remuneration either to individual or payment for business purposes;

(b) payment for international trade or for business transacted by him outside India;

(c) by way of a gift or presentation received as member of any Indian delegation;

(d) Gift not exceeding ₹ 8000 per annum;

Profit-oriented organisations are not covered by FCRA.

1. An applicant would normally be the person who is directly responsible for day-to-day running of the NGO, an office bearer, authorised through a resolution of the Governing Body.
2. Postal address of your set-up may be different from registered office.
3. FCRA authorities scrutinising documents do exercise extra caution (and may on occasion reject an application for prior permission of FC registration) when relatives (sons, parents, in-laws and other family members) are named as members of the Board of an NGO.
4. There is no generalised minimum or maximum limit for prior-permission, though FCRA will be more cautious in granting permission for very large grants.
5. Section 21, FCRA.

Bank Account for foreign funds

An NGO is required to open and use a bank account exclusively for foreign funds under FCRA.

Income-tax Benefits on foreign funds

(a) Benefits for the NGO:

Income received by any religious or charitable trust or institution registered with the income tax authorities is not taxable as long as this income is applied for the objects of the organisation.

(b) Benefits to Donors

The donors are also entitled to get an exemption on their donation, which can be 50% or 100% depending on the category of organisations.

Illustrative example of NGOs handling foreign money/materials:

Sponsorships by foreign parties – An occasion can arise where a moneyed foreign person agrees to kindly sponsor an NGOs annual charity festival and the foreign funds are forwarded directly to the printers for printing of catalogues for this festival by them, the NGO accepting the catalogues has accepted foreign contribution and is under an obligation to intimate the Central Government. If the NGO does not have requisite FCRA registration or prior permission it cannot accept the sponsorship in the first place.

Remember:

- If the foreign funds are already lying in your account, do not spend the money till you receive permission.
- Form FC-3 is to be filed at the end of each financial year (by 31st July). Filing required to be done annually till such time the FCRA funds are exhausted.
- *Always make two complete sets of the documents* – one for filings with the FCRA, the other for the NGO records. Wherever documents have been delivered by hand, to obtain written acknowledgment with date, stamp and signatures (when documents are sent by registered post – to retain proof of posting and acknowledgment card (when received back) carefully.
- **Documents to attach with Form FC-8**: Attach one copy each of the following documents:
  (i) Certificate from concerned District Collector/ Department of State Government/Ministry or Department of Central Government;
  (ii) Activity report for past three years ;
  (iii) Audited Statements of Account for past three years;
  (iv) List of States or districts of focus of work;
  (v) Note on socio-economic background of the beneficiaries and of the region to be covered;

(vi) Where NGO is a Society, then also attach certified copy of Registration Certificate issued by the Registrar of Societies;[1]

(vii) Certified copy of registered Trust Deed[1] (if NGO is a Trust);

(viii) Certified copies of (a) Memorandum and Articles of Association, (b) registration certificate issued by the Registrar of Companies, (c) section 25 license issued by the Regional Director, Department of Company Affairs (If NGO is a non-profit company);

(ix) FCRA does not allow mixing up of Indian funds and FCRA funds. This means both funds are to be maintained separately.

Scholarships from foreign sources

Indians receiving a foreign scholarship or stipend from foreign source has to intimate[2] the Central Government of the amount, purpose, source and intervals of such payment.

A list of offences and corresponding penalties under the FCRA is given below:

Offence	Who is liable	Penalty
1. Politician/ journalist/ judge/Government servant/ public sector employee accepts foreign contribution (sec. 4)	Person who accepted the foreign contribution; Person who assisted	Seizure & confiscation of foreign contribution [secs. 16, 18]Additional fine (upto five times in value) if original foreign contribution spent [sec. 24] Imprisonment upto five years and/or fine [sec. 23]
2. Political organisation accepts foreign contribution without Government's prior permission (sec. 5)	Person who assisted	Seizure and confiscation of foreign contribution [secs. 16, 18] Additional fine (upto five times in value) if original foreign contribution spent [sec. 24] Imprisonment upto five years and/or fine [sec. 23]
3. Indian resident or Indian Citizen accepts foreign contribution (currency) for above persons (secs. 4, 5)	Indian resident or Indian citizen who accepted; Person who assisted	Seizure & confiscation of foreign contribution (secs. 16, 18) Additional fine (upto five times in value) if original foreign contribution spent (sec. 24) Imprisonment upto five years and/or fine (sec. 23)
4. Indian resident or Indian Citizen is involved in delivery of foreign contribution (currency) to above persons (secs. 4, 5)	Indian resident or Indian citizen who was involved in delivery; Person who assisted	Seizure & confiscation of foreign contribution (secs. 16, 18) Additional fine (upto five times in value) if original foreign contribution spent (sec. 24) Imprisonment upto five years and/or fine (secs. 23, 25)

1. Certified copy of Registration Certificate issued by the Charity Commissioner (in Gujarat and Maharashtra).
2. However, intimation is not required if the scholarship received is upto ₹ 36000 during an academic year.

Offence	Who is liable	Penalty
5. Person after receiving foreign contribution (currency) for one association delivers it to different Associations (section 4)	Person who received the currency; Person who assisted	Seizure & confiscation of foreign contribution (secs. 16, 18) Additional fine (upto five times in value) if original foreign contribution spent (sec. 24) Imprisonment upto five years and/or fine (secs. 23, 25)
6. Association accepts foreign contribution without registration or prior permission (sec. 6)	Association Chief Functionary etc. Governing Body members; Other officers; Person who assisted	Seizure & confiscation of foreign contribution (secs. 16, 18) Additional fine (upto five times in value) if original foreign contribution spent (sec. 24) Imprisonment upto five years and/or fine (sec. 23)
7. Association having FCRA registration receives foreign contribution in different bank accounts (sec. 6)	Association Chief Functionary etc. Governing Body members; Other officers	Compulsory prior permission (sec. 6) Inspection & seizure of accounts & records (secs. 14, 15) Seizure & confiscation of foreign contribution (secs. 16, 18) Additional fine (upto five times in value) if original foreign contribution spent (sec. 24)
8. Association having FCRA registration does not file FC-3 in time (sec. 6)	Association Chief Functionary etc. Governing Body members; Other officers	Compulsory prior permission (sec. 6) Inspection & seizure of accounts & records (secs. 14, 15) Seizure & confiscation of foreign contribution (secs. 16, 18) Additional fine (upto five times in value) if original foreign contribution spent (sec. 24) Imprisonment upto one year and/or fine upto ₹ 1,000 (sec. 25)
9. Association having FCRA registration files FC-3 with false information (sec. 6)	Association Chief Functionary etc. Governing Body members; Other officers	Compulsory prior permission (sec. 6) Inspection and seizure of accounts & records (secs. 14, 15) Seizure and confiscation of foreign contribution (secs. 16, 18) Additional fine (upto five times in value) if original foreign contribution spent (sec. 24) Imprisonment upto one year and/or fine upto ₹ 1,000 (sec. 25)
10. Person nominated for election within 180 days of accepting foreign contribution fails to intimate Central Government (sec. 6)	Concerned person	Seizure & confiscation of foreign contribution (secs. 16, 18) Additional fine (upto five times in value) if original foreign contribution spent (sec. 24) Imprisonment upto

Offence	Who is liable	Penalty
		one year and/or fine upto ₹ 1,000 (sec. 25)
11. Indian citizen receiving scholarship, stipend or similar payment (exceeding ₹ 36,000 in academic year) fails to file form FC-5	Concerned person	Seizure & confiscation of foreign contribution (secs. 16, 18) Additional fine (upto five times in value) if original foreign contribution spent (sec. 24) Imprisonment upto one year and/or fine upto ₹ 1,000 (sec. 25)
12. Politician/journalist/ judge/Government servant/ public sector employee accepted foreign contribution exceeding ₹ 8,000 (as gift) from relative without prior permission (sec. 8)	Person who accepted the gift	Seizure & confiscation of foreign contribution (secs. 16, 18) Additional fine (upto five times in value) if original foreign contribution spent (sec. 24) Imprisonment upto five years and/or fine (sec. 23)
13. Politician/journalist/ judge/Government servant/ public sector employee who accepted foreign contribution upto ₹ 8,000 (as gift) from relative and did not give intimation to Government (sec. 8)	Person who accepted the gift	Seizure & confiscation of foreign contribution (secs. 16, 18) Additional fine (upto five times in value) if original foreign contribution spent (sec. 24) Imprisonment upto one year and/or fine upto ₹ 1,000 (sec. 25)
14. Politician/journalist/ judge/Government servant/ public sector employee accepts foreign hospitality without medical emergency (sec. 9)	Person who accepted the foreign hospitality	Imprisonment upto three years and/or fine (sec. 23)
15. Politician/journalist/ judge/Government servant/ public sector employee accepts foreign hospitality in medical emergency and does not give intimation in 30 days (sec. 9)	Person who accepted the foreign hospitality	Imprisonment upto one year and/or fine upto ₹ 1,000 (sec. 25)
16. Association with FCRA registration or prior permission does not maintain prescribed records and accounts (sec. 13)	Association Chief Functionary etc. Governing Body members; Other officers	Inspection & seizure of accounts & records (sec. 14, 15) Seizure and confiscation of foreign contribution (secs. 16, 18) Additional fine (upto five times in value) if original foreign contribution spent (sec. 24) Imprisonment upto one year and/or fine upto ₹ 1,000 (sec. 25)
17. Person transfers/ deals with foreign contribution despite prohibitive order under section 12 (sec. 22)	Person who trans-ferred or dealt; Person who assisted	Seizure & confiscation of foreign contribution (secs. 16, 18) Additional fine (upto five times in value) if original

Offence	Who is liable	Penalty
		foreign contribution spent (sec. 24) Imprisonment upto three years and/or fine upto market value of foreign contribution (sec. 22)
18. Accepting or assisting another person to accept foreign contribution in violation of FCRA (sec. 23)	Person who accepts; Person who assists another to accept	Seizure & confiscation of foreign contribution (secs. 16, 18) Imprisonment upto five years and/ or fine (sec. 23) Additional fine (upto five times in value) if original foreign contribution spent (sec. 24)
19. A person is convicted second time for offence under sec. 23(1) or 25 (sec. 25A)	Concerned Person	Prohibition on accepting foreign contribution for three years (sec. 25A)



10

NATURE OF NGO ACTIVITIES

(I) AGED CARE



Everyone is the age of their heart.

—Guatemalan proverb

Increased elderly population is the most significant demographic change seen in this century. In other words, the biggest achievement of the century is longevity. The world's elderly population is increasing monthly by about one million persons.

Old and Grey in India

Aging is an irreversible biological phenomenon and can be viewed as the survival of a growing number of people completing the phase of traditional adult roles. In India, life expectancy has gone up from 20 years in the beginning of the 20th century to 62 years today. Better medical care and low mortality have made the elderly the fastest growing section of society. Persons above 60 years of age are classified as aged persons. Though homes for the aged are making their presence felt in India, India's urban retirees largely continue to depend on household servants to clean, cook, walk the dogs and answer door bells.

More Aged Indians and senior citizens are visible on account of advancements in medical/health technologies, gradual fall in mortality rate, increased life expectancy, increased awareness and better nutrition.

Aged in India[1]	Percentage
Older persons from the unorganized sector, with no social security at the age of 60.	90%
Older persons living below the poverty line.	30%
Older persons living just marginally over it.	33%
Older persons living in rural areas.	80%

1. Source – HelpAge India.

Aged in India	Percentage
Older illiterate persons and those who can only be engaged in physical labour.	73%
Women over 60 who are widows and with no support whatsoever.	55%
Centenarians in India.	Nearly 200,000

Nature of Aged Care NGO work

In India Aged Care[1] workers generally provide (i) Ophthalmic Care; (ii) Mobile Medicare Units; (iii) Income Generation Schemes; (iv) Day Care Centres; (v) Adopt-A-Gran; (vi) Homes for the Aged; (vii) Disaster Mitigation; (viii) Adult Education.

Grandparents beware – As part of awareness campaigns, NGOs ought to mandate police verification of domestic help of aged people to curb the serious rise in crimes[2] on the aged by their domestic help.

Given the Indian scenario, NGOs apart from the laudable efforts of existing NGOs – the aged would appreciate effective assistance in (i) *Home help and support* (timely and appropriate access to a wide range of home help and support services); (ii) *Transport*[3] – access to specially adapted/flexible transport options (including safe transport options at late hours); (iii) *Community Safety;* (iv) *Participation* (opportunities for older people to participate in their local community and mechanisms to prevent isolation and loneliness).

Legal Aspect

As a source code for traditional Hindu conduct, Manu expressly provided for proper treatment of the old: "Even though wronged, treat not with disrespect thy father, mother, teacher, elder brother."

Burden of proof of discrimination: A person who wishes to assert a human rights complaint has to make out a *prima facie* case of discrimination. After that, the legal burden shifts to the party whose behaviour, act or omission, is complained about to justify that the said act is reasonable and *bona fide* in the circumstances.

1. UN Principles of Ageing cover the following aspects:
   (i) Independence;
   (ii) Participation;
   (iii) Care;
   (iv) Self-fulfilment;
   (v) Dignity.
2. Directive Principles as enshrined in the Constitution provide for security of every citizen (Article 39A).
3. Article 41 of the Constitution provides for public assistance for aged people.

Qualified care workers: It is of utmost necessity to ensure that care[1] workers/ doctors working with Aged Care NGOs have the requisite training, qualification to participate in caring for the aged – since it involves the mental and physical health[2] and life itself of the aged individual. The Hippocratic oath calls upon doctors to refrain from any act by which they would endanger or destroy life[3] (Indian law does not sanction mercy killing).

Confidentiality of records: Handling of 'health information' of Aged People calls for a duty of maintaining confidentiality by care workers.

Privacy of the Aged: Privacy rights of the aged to their person and property cannot be infringed upon by the workers unless with consent of the particular aged individual.

Select NGOs on Aged Care

1. HelpAge India – Head Office

Focus of activity: Supports care for the aged and conducts training for persons working with the aged; research and development centre studies; problems related to age care and evolves effective techniques in training and research and development of facilities; free cataract operations performed from time to time; resource mobilisation (direct mail, schools fund-raising, greeting cards sales.)

Address: C-14 Qutab Institutional Area, New Delhi - 110 016.

2. Indian Federation of Ageing

It is a registered Public Trust with Charity Commissioner, Mumbai since 1989 and is affiliated to International Federation on Ageing, Montereal, Canada.

Focus of activity: Aims at bringing various organisations working for welfare of senior citizens in India under one umbrella to have proper co-ordination and to provide speedy solutions to problems of senior citizens in India.

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1. Care of the aged extends to their physical, economic and mental aspects.
2. Common age related health problems include – increase in blood pressure, heart disease, cancer, diabetes, backache, sciatica, osteoporosis, arthritis, respiratory problems, dental caries, intolerance for cold, anemia and other nutritional deficiencies, cataract, in women – prolapse of the uterus, psychological problems – depression, impaired memory.
3. State of Oregon, America has the world's only legislation to specifically permit a doctor to prescribe lethal drugs for the purpose of ending a patient's life.



(II) AGRICULTURE & FISHERIES

Population and Agricultural Workers

(In Millions)

Year	Total Population	Average Annual Exponential Growth Rate(%)	Rural Popul- ation	Culti- vators	Agricul- tural Labourers	Other workers	Total
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1981@	683.3	2.22	523.9	92.5	55.5	96.6(a)	244.6
			(76.7)	(37.8)	(22.7)	(39.5)	(100.0)
1991+	846.3	2.14	628.7	110.7	74.6	128.8(a)	314.1
			(74.3)	(35.2)	(23.8)	(41.0)	(100.0)
2001(P)	1027.0	1.93	741.7 (72.22)				

@ Total and rural population of India in columns 2 and 4 includes population of Assam worked out by interpolation as 1981 Census could not be held in Assam due to disturbed conditions. The data on workers in columns 5-8 exclude Assam.

\+ Total and rural population of India in columns 2 and 4 includes the projected population of J&K as 1991 Census could not be conducted in J&K due to disturbed conditions.

The data on workers in columns 5-8 exclude J&K.

(a) Includes marginal workers.

Note.—Figures in parentheses represent percentage to the total.

Source: Registrar General of India, New Delhi.

Emerging Features of Indian Agriculture

The Ninth Five Year Plan (1997-2002) sought to achieve its agricultural targets through a regionally differentiated strategy[1] based on agronomic, climatic, and environment-friendly conditions.

Increased mechanization in agriculture has created demand for more trained manpower for the operation, maintenance, and management of agricultural machinery.

The Agricultural Development Strategy was revised in 1999, as the national strategy on Sustainable Agriculture and Rural Development (SARD). The Strategy is essentially based on the policy on food security and alleviation of hunger.

The Indian Council of Agricultural Research (ICAR) plays a crucial role in promoting science and technology and its application in agriculture.

Participatory Development – With the support of development projects, farmer's groups or self-help groups at the grass-roots level have emerged slowly and are beginning to actively engage in the process of participatory development.

The Government has set up Farm Machinery Training and Attesting Institutes to provide better quality equipment to farmers.

Biotechnology is a key factor in agricultural development henceforth. Genetic engineering/modification techniques hold enormous promise in developing crop varieties with a higher level of tolerance to biotic and abiotic stresses.

Focus Issues of NGOs

For any assistance in agricultural development in India, an NGO should focus on the following issues:

- Land use planning by and on behalf of farmers (yield of crops under specific soil, climatic and management conditions);
- Recognize the right of communities to manage and use natural resources (water sharing[2], etc.);
- 'Adopt a farmer' approach for facilitation of effective one-to-one progress;
- Provide assistance for the development of responsible private sectors (small-scale enterprise in agricultural inputs, processing and marketing) and professional farmers' associations;

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1. The north-western high productivity regions sought to promote diversification and high value crops, and strengthen linkages with agro-processing industries and exports. The Eastern region, with abundant water, sought to promote productivity through flood control, drainage management, improvement of irrigation systems. The water scarce peninsular region, including Rajasthan, sought to focus on efficient water harvesting and conservation methods and technologies based on a watershed approach and appropriate farming systems. Ecologically fragile regions, including Himalayan and desert areas, sought to concentrate on eco-friendly agriculture (Information on Sustainable Development in India provided at 5th and 8th Sessions of the United Nations Commission on Sustainable Development).
2. The Cauvery water sharing dispute between Karnataka and Tamil Nadu is a current example of misery caused to affected farmers of both States.

- Promote Agricultural market information service as an important component of the agricultural system and further promote education programs on grain[1] quality, pesticide hazards, alternative pest control and integrated pest management;
- Support farmers training institutions in different geographic zones for farmers to benefit from proper professional training;
- Effectively enforce laws that regulate and govern agricultural material, to protect the health of small farmers and minimize environmental destruction.



Fisheries[2]

Community livelihoods are dependent upon access to forest resources and fishing for subsistence living. Little attention has been given to commercial fishing and its impacts on local people's livelihood and food security. Fish[3] has long been part of the staple diet of a modest section of Indians (Bengalies and Keralites), second only to rice in consumption. Problem areas within the fishery sector which can be worked upon by NGOs are listed below:

Impact of commercial fishing on local communities: Commercial fishing continues to have a negative impact on local communities. Traditional fishermen[4] (for *e.g.* fisherman of the Chilika lake in Orissa) who fish for subsistence living are constricted by commercial fishing and conflicts between the two groups have prompted Government intervention from time to time. The State's mechanisms for avoiding these impacts on local people are inadequate.

- Illegal fishing: This continues all over the country and is a major cause of the destruction and the decline of fishery resources – illegal fishing supplements income to pay operational costs, government fees and numerous informal payments.
- Lack of adequate legal framework does not help the stagnant position of the community fisheries.

Legal Aspect

Land: (a) ***State Legislation:*** Land is a subject under exclusive jurisdiction of the States, and State Governments have enacted legislations restricting transfer and use of productive arable land to non-agricultural purposes;

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1. "Grain" as defined in the US Code "means corn, grains, food grains, and oilseeds, wheat, rye, oats, barley, flaxseed, sorghum, soyabeans, mixed grain, and any other food".
2. World Fisheries Day is on November 21.
3. Traditional fish includes mackerel and sardine.
4. Traditional fishermen living in and around Chilika lake in Orissa have fought for sole fishing rights, and a complete ban on prawn farming. According to National Fishermen Federation and World Federation of Fisher People, the fishermen colony nearabouts the island of Jambudwip in the Sunderbans (West Bengal), struggle to carry out their activities in the face of plans for large-scale development in the area (Source: *Environment News Service*, January 3, 2003).

(b) ***Property rights:*** A small percentage of privately owned land (for agricultural/livestock produce) in India is formally registered or protected by law. As a consequence most rural families are involved in land disputes which drain them of their monetary resources and hours of labour;

(c) ***Irrigation:*** Environmental clearance under Environment (Protection) Act is required for the certain agricultural development projects like irrigation projects covering an area of more than 10,000 hectares;

(d) ***Forest Land:*** Where lands include forestland, clearance under Forest (Conservation) Act is required for the use of forests for non-forest purposes. Further, where it involves National parks/Sanctuaries, if the activity is not beneficial to the wildlife, then the same cannot be carried out.

Agricultural produce: Voluntary organisations engaged directly or indirectly in inspecting, handling, weighing, loading, transporting, cleaning, labeling, packing or related functions *vis-à-vis* agricultural produce should ensure that the volunteers are suitably qualified/trained to carry out the activity (or supervision thereof). For example, training, knowledge and adherence to recognised standards is desired for sampling and inspection of standards of cleanliness of grain, kind, class, quality, or condition of grain. It follows that any organisation which knowingly makes, issues, alters, forges any relevant official certificate/official mark, (or provides false information) by any means, including but not limited to deceptive loading, handling, weighing, or sampling agricultural produce is liable for punishment provided under the relevant law (laws relevant in this section include those of regulation & control, fiscal policy, export & import, taxation, exchange & interest rate control, export promotion and incentives and insecticide laws).

All India Production of Milk, Eggs & Wool During 1995-2001[1]

Year	Milk (Million Tonnes)	Eggs (Billion Nos.)	Wool (Million Kgs)
1995-96	66.2	27.200	43.6
1996-97	69.1	27.500	45.6
1997-98	71.9	28.689	46.7
1998-99	75.2	29.476	48.3
1999-2000	78.1	31.501	50.7
2000-01	81.0	32.420	53.4

1. Janmanch – The People's Forum.

Select NGOs on Agriculture

1. Navdanya

Focus of activity: *Seed Banks:* Works with village communities to develop efficient seed banks to ensure safe storage of seed till the next cultivation season; genetic resource conservation to protect different strains and types of grain; workshops and seminars on seeds; patenting and organic farming.

Address: A-60, Hauz Khas, New Delhi – 110016.

2. Bharatiya Agro Industries Foundation (Public Charitable Trust)

Focus of activity: Livestock Development, Water Resources Development, Tree Based Farming, Tribal Rehabilitation through Agri-Horti-Forestry.



(III) JUVENILE OR CHILD

All kids need is a little help, a little hope and somebody who believes in them.

—Earvin "Magic" Johnson

Who is a child?

The law recognizes a male or female human being as a juvenile or child and not an adult person, the juvenile or child is he/she is less than eighteen years[1] of age.

In case of *Abuzar Hossain* v. *State of West Bengal*, (2012) 10 SCC 489: JT 2012 (10) SC 454: 10 SCALE 101 it was held that the court, where the plea of juvenility was raised for the first time should always be guided by the objectives of the Act of 2000 and be alive to the position that the beneficent and salutary provisions contained in the Act were not defeated by hyper-technical approach and the persons who are entitled to get benefits of the Act get such benefits.

Rights of a juvenile or child

'*Loving Care*' would simply sum up the whole gamut of rights and demands of a child (and we are not even taking into account the 'please give me' requests for new Barbie dolls, burgers, cokes, chocolates....). However, speaking legalese, we discuss below the main laws which provide and protect the rights of a child.

Right to Survival – Includes the right to life, the attainable standards of health, and an adequate standard of living;

Right to Protection – Includes freedom from all forms of exploitation, abuse and inhuman or degrading treatment (includes the right to special protection in an emergency);

Right to Development – Includes the right to be educated, to receive support for development and care during early childhood (also includes the right to leisure, recreation, and to cultural activities);

Right to freedom of thought and expression – Which the Constitution has provided in equal measure for children as well as adults.

Registration of birth – The UN emphasizes that lack of birth registration is a violation of the child's inalienable human right to be given an identity at birth and to be regarded as part of society. Registration of a child's birth confirms his age and protects[2] him from abuse and exploitation, (including military recruitment and involvement in armed conflict) child labour and early marriage. Registration gives a child his 'membership card' for participation in society, to enforce his rights including education and health care.

1. Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000.
2. In later life, the unregistered juvenile or child may be unable to apply for a passport or formal job, open a bank account, get a marriage licence, stand for elective office or vote.

ALL INDIA CLEANLINESS WEEK



Legal Aspects

Juvenile Justice (Care and Protection of Children) Act, 2000: The Act provides for proper care, protection and treatment to the children and juveniles, by catering to their development need and by adopting a child-friendly approach.

The Act covers the child or juvenile upto age of 18 years. The Act lays down the basic principles for administering justice to a juvenile or the child and complies with UN Convention on the Rights of Child.[1]

Begging: According to the UN, a street child is any child for whom the street is the habitual abode and/or a source of livelihood. The Juvenile Justice (Care and Protection of Children) Act, 2000 defines[1] "begging" as soliciting or receiving alms in a public place or entering into any private premises for the purpose of soliciting, or receiving alms, whether under any pretence and exposing or exhibiting with the object of obtaining or exposing, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal.

Sexual Abuse[2]: While there is no specific provision in Indian law for sexual abuse of children by parents or teachers – specific cases are covered by the general provisions relating to sexual abuse of children by their custodian, in whatever capacity they may be. Relevant laws are the (i) *Indian Penal Code, 1860* ("IPC, 1860")

(i) Offence of 'rape' of a child (section 376(1)[3];

(ii) 'Consent' of a child[4] when not valid ground under section 90[5];

1. Juvenile Justice (Care and Protection of Children) Act, 2000.
2. Punishment: An offender on conviction, of any of specified sexual offence against a child is liable to be punished with imprisonment which can extend from 5 to 10 years (and upto life imprisonment as provided in the relevant sections) and fine.
3. 'Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve (12) years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both;

   Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

   (2) Whoever-... (f) commits rape on a woman when she is under twelve (12) years of age;....shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine; Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.'
4. Age of consent for sexual activity.—The legal age at which a person competent to consent to sexual intercourse is currently eighteen (18) years.
5. A consent is not such a consent as is intended by any section of this Code – if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

   if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequent of that to which he/she gives his/her consent; or

   unless the contrary appears from the context, if the consent is given by a person who is under twelve (12) years of age....

(iii) 'Carnal intercourse against the order of nature with a child' (Section 377);

(iv) Sexual abuse is by a hospital worker (Section 376D);

(v) Sexual abuse is by the superintendent of a children's institution, remand home, jail (Section 376C);

and the (ii) *Immoral Traffic (Prevention) Act, 1986* ('Seduction of a person in custody' (Section 9).

Child Prostitution[1] **and Trafficking:** Sections 366A[2] and 366B[3], IPC, (45 of 1860) cover the offence of child prostitution[4] in and from India and punishment for the offenders thereof. Children are also trafficked into urban areas for begging[5].

Child pornography: Section 292[6], IPC, (45 of 1860) elaborately covers the offence of sale, letting on hire, distribution, public exhibition, circulation, import, export, possession or production for the above purposes, receiving profits from the above acts of any obscene material or object.

Child Education

Education in India has a parallel nexus with poverty, social environment and political will (or adequacy of such will) of the government.

Child Labour[7]: Child labour primarily exists because wages of a child labourer[8] is a source of income to a poor family. Though even the expense of schooling leaves some children with no option but to work in order to develop skills useful in the job market, instead of taking advantage of a formal education[9]. Exploitation of the child[10] is the foremost (ill)legal issue because often children are paid less than their adult counterparts. India has world standard labour legislation, but in practice it has more slave and abused labourers than any

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1. Child prostitutes include boys as well – they are commonly targeted by foreign paedophiles.
2. Section 366A deals with procuring minor girls from one part of India to another.
3. Section 366B deals with the offence of importing into India from any country outside India girls below the age of twenty-one (21) years for the purpose of prostitution.
4. Most prostitutes, come from rural/lower income families being lured by brokers offering jobs described as well paid.
5. They are sometimes injected with substances to make them disabled, often paralyzed, so they can earn more as beggars.
6. Punishment: First conviction incurs imprisonment upto two years and fine upto two thousand rupees; second or subsequent conviction calls for extended imprisonment upto five years and fine upto five thousand rupees.
7. The 1981 Census of India divided child labour into nine industrial divisions: I. Cultivation, II. Agricultural Labour, III. Livestock, Forestry, Fishing, Plantation, IV. Mining and Quarrying, V. Manufacturing, Processing, Servicing and Repairs, VI. Construction, VII. Trade and Commerce, VIII. Transport, Storage and Communication, and IX. Other Services.
8. (Article 24 of the Constitution) – No child below the age of fourteen years shall be employed to work in any factory or mine or employed in any hazardous employment.
9. In India, children are working mostly in export-oriented industries (carpets, diamonds, glassware, footwear) and tourist services (including sex work).
10. A damning report on child labour and their working conditions in the sports-goods (football) industry at Jalandhar and Batala (titled The Dark Side of Football) was provided by the India Committee of the Netherlands (ICN), an independent NGO.

other country. Indian legislation prohibits the employment of children below 14 years of age, in any industry or workshop. However, this blanket prohibition is tempered down in cases where the workshop process involves only the family members without employing outside hired labourers[1]. In family workshops of beedi making, wool cleaning and soap manufacturing a child of the family can be employed without violating penal provisions of child labour.

Supreme Court Directions On Child Labour

The Supreme Court of India[2], has provided directions for manner of withdrawal, rehabilitation of children working in hazardous occupations, as also directions for regulating and improving working conditions of children working in non-hazardous occupations: The key directives include:

(a) Withdrawal of children working in hazardous industries and ensuring their education in appropriate institutions;

(b) Contribution of Rs. 20,000 per child to be paid by the offending employers of children to a welfare fund to be established for this purpose;

(c) Employment to one adult member of the family of the child so withdrawn from work, and if that is not possible a contribution of Rs. 5000 to the welfare fund to be made by the State Government;

(d) Financial assistance to the families of the children so withdrawn to be paid out of the interest earnings on the corpus of Rs. 20,000/25,000 deposited in the welfare fund as long as the child is actually sent to the school;

(e) Regulating hours of work for children working in non-hazardous occupations so that their working hours do not exceed six hours per day and education for at least two hours is ensured. The entire expenditure on education is to be borne by the concerned employer;

(f) Planning and preparedness on the part of Central and State Governments in terms of strengthening of the existing administrative/regulatory/ enforcement frame-work (covering cost of additional manpower, training, mobility, computerization etc.) implying additional requirement of funds.

Also relevant under this head are the provisions of the Child Labour (Prohibition & Regulation) Act, 1986. The Act extends to all establishments where an industrial process is carried on including shops, commercial establishments, workshop, farm, residential hotel and restaurant, theatre, or other place of public amusement or entertainment. A child is a person who has not completed 14 years of age. A child who is engaged for wages, whether in cash or kind is a child worker. In terms of section 4 of the Children (Pledging of Labour) Act, 1933, the parent or guardian of a child is liable to penal consequences if he enters into an agreement to pledge the labour of the child.

Minor undertrials: In *Sheela Barse (II)* v. *Union of India*, AIR 1986 SC 1773: 1986 Cr LJ 1736: (1986) 3 SCC 596, the Supreme Court observed:

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1. Refer Employment of Children Act, 1938 and Beedi and Cigar Workers (Conditions of Employment Act), 1966.
2. Judgment of December 10, 1996 in Writ Petition Number 465/1986.

"We fail to see why investigation into offences alleged to have been committed by children cannot be completed quickly and equally why can the trial not take place within a reasonable time after the filing of the charge-sheet. Really speaking, the trial of children must take place in the Juvenile Courts and not in the regular criminal courts. There are special provisions enacted in various statutes relating to children providing for trial by Juvenile Courts in accordance with a special procedure intended to safeguard the interest and welfare of children, but, we find that in many of the States there are no Juvenile Courts functioning at all and where there are Juvenile Courts, they are nothing but a replica of the ordinary criminal courts, only the label being changed. The same magistrate who sits in the ordinary criminal courts goes and sits in the Juvenile Court and mechanically tries cases against children. It is absolutely essential, and this is something which we wish to impress upon the State Governments with all the earnestness at our command, that they must set up Juvenile Courts, one in each district, and there must be a special cadre of magistrates who must be suitably trained for dealing with cases against children. They may also do other criminal work, if the work of the Juvenile Courts is not sufficient to engage them fully, but they must have proper and adequate training for dealing with cases against juveniles, because these cases require a different type of procedure and qualitatively a different kind of approach."

The Supreme Court, therefore, directed that where a complaint is filed or First Information Report is lodged against a child below the age of 16 years for an offence punishable with imprisonment of not more than 7 years, the investigation shall be completed within a period of three months from the date of filing of the complaint or lodging of the first information report and if the investigation in not completed within this time, the case against the child must be treated as closed. If within three months, the charge-sheet is filed against the child in case of an offence punishable with imprisonment of not more than 7 years, the case must be tried and disposed of within a further period of 6 months at the outside and this period should be inclusive of the time taken up in committal proceedings, if any.

The Court further observed:

"There are courts of magistrates and Additional Sessions judges where the workload is so heavy that it is just not possible to cope with the workload, unless there is increase in the strength of magistrates and Additional Sessions Judges. There are instances where appointments of magistrates and Additional Sessions Judges are held up for years and the courts have to work with depleted strength and this affects speedy trial of criminal cases. The magistrates and Additional Sessions Judges are often not provided adequate staff and other facilities which would help improve their disposal of cases. We are, therefore, firmly of the view that every State Government must take necessary measures for the purpose of setting up adequate number of courts, appointing requisite number of judges and providing them the necessary facilities. It is also necessary to set up an institute or academy for training of Judicial Officers so that their efficiency may be improved and they may

be able to regulate and control the flow of cases in their respective courts. The problem of arrears of criminal cases in the courts of magistrates and Additional Sessions Judges has assumed rather disturbing proportions and it is a matter of grave urgency to which no State Government can afford to be oblivious. But, here, we are not concerned with the question of speedily trial for an accused who is not a child below the age of 16 years. That is a question which may have to be considered in some other case where this Court may be called upon to examine as to what is reasonable length of time for a trial beyond which the court would regard the right to speedy trial as violated. So far as a child-accused of an offence punishable with imprisonment of not more than 7 years is concerned, we would regard a period of 3 months from the date of filing of the complaint or lodging of the first information report as the maximum time permissible for investigation and a period of 6 months from the filing of the charge-sheet as a reasonable period within which the trial of the child must be completed. If that is not done, the prosecution against the child must be liable to be quashed. We would direct every State Government to give effect to this principal or norm laid down by us insofar as any future case are concerned, but so far as concerns pending case relating to offences punishable with imprisonment of not more that 7 years, we would direct every State Government to complete the investigation within a period of 3 months from today if the investigation has not already resulted in filing of charge-sheet and if a charge-sheet has been filed, the trial shall be completed within a period of 6 months from today and if it is not, the prosecution shall be quashed."

Adoption

Effects of Adoption: From the date of adoption an adopted child is considered to be the child of his or her adoptive father or mother for all purposes. All the ties of the child in the family of his or her birth will be deemed to be severed.

Who can give in adoption: In the specifics prescribed for Hindus, only the father, mother, or guardian of child has the capacity to give the child in adoption. The father can give the child in adoption only with the consent of the mother and alternatively the mother can give up the child for adoption with her husband's consent. However 'consent' is not mandated in circumstances where the wife/husband has renounced the world, ceased to be a Hindu, is of unsound mind or deceased. The guardian would require the previous consent of a court.

Age criteria – Normally, the couple must be under 40 years to adopt an infant under 12 months old and under 45 to adopt a toddler. Older couples are considered for school age children.

By Hindu[1] *Couple* - If a couple wants to adopt under Hindu law, it is necessary that the husband is a Hindu [then the status of wife *vis-à-vis* (i) nationality (whether Indian or not); (ii) religion does not matter]. Consent of the wife (or wives) to adopt is required (except in specified circumstances). An unmarried, divorcee or widowed Hindu woman[2] can also adopt a child.

1. Also includes Buddhists, Jainas and Sikhs.
2. She must of course have the legal 'capacity' to adopt. A Hindu woman whose husband has converted to another religion or has renounced the world can also adopt a child.

A valid Adoption[1] is final in India[2]. Hindu Adoption cases are heard in the District Courts; one cannot cancel a Valid Adoption and no person can consider an award for adoption.

'Suitable child': Even a lunatic child can be validly adopted[3]. An adoption under Hindu law would require the child to be a Hindu, not already adopted, unmarried, below the age of 15 years[4].

By Non-Resident Indian (NRI) couples and Indian Non- Hindus couples – One spouse must be of Indian heritage (the spouse of his/her parents must have been born in India). An NRI couple will only receive guardianship of the child in India and must legally adopt[5] him/her in the U.S. Muslims, Christians, Parsis and Jews in India can only 'adopt' a child with due permission of the Court in terms of the Guardianship and Wards Act, their personal laws do not provide for adoption like the Hindus.

Relevant laws providing for adoption and guardianship of a child include Guardianship and Wards Act, Hindu Minority and Guardianship Act 1956, Hindu Adoption and Maintenance Act, 1956.

Adoption by foreigners: Foreigners find no mention in adoption laws of Indian children. The standard practice for a foreigner to adopt an Indian child is to apply to an Indian District Court for legal custody of a child to be taken abroad for adoption in terms of the Guardian and Wards Act of 1890. Foreigners are to first approach an adoption agency in their home country approved by the Indian Government, thereafter an Indian agency recognized and listed by the Indian Government will arrange for children who are available for adoption by foreigners.

Other Legal Points for NGOs

Trained Personnel – For those NGOs working with juvenile delinquents, it is imperative that all staff members should be trained in working with children in conflict with the law (is conscious of the child's rights and the alleged wrong(s) committed by the child).

Custom – It is generally understood that a child (toddlers and small children) does not have the capacity to decide for himself. Therefore in matters which involve the child's consent a trained discretion is to be practiced. Under no circumstances can an NGO compel a child to practice/participate in a welfare

1. Valid Adoption – For a valid adoption by a Hindu (under the Hindu Adoption and Maintenance Act, 1956 it is necessary that the person adopting has the capacity and also the right to take adoption, the person giving in adoption has the right to do so, the person adopted is capable of being taken in adoption, and the adoption has complied with other conditions of the said Act.
2. In order to enable the child to have a U.S. birth certificate one might consider to readopt in the U.S. The child automatically becomes a U.S. Citizen once he/she arrives in the U.S.
3. *Devagondar Patil* v. *Shamgondar Patil*, AIR 1992 Bom 13.
4. Unless custom or usage of the parties permits adoption beyond 15 years of age.
5. The total fees may be categorized as (a) Application Fees, and (b) Agency fees, India fees and Humanitarian fees (item (b) covers court costs, attorney's fees, orphanage fees, donations, humanitarian aid, Indian Passport, dossier preparation, courier and long distance telephone calls, service of Indian staff, foreign staff, etc.). Also Child's Visa and Physician Exam fees.

measure which is against his religion (thus basic concepts of vegetarianism, manner of prayer are all universally accepted as matters of personal choice).

No Discrimination – Staff cannot discriminate a child for her/his gender, caste, religion, illegitimacy, physical deformity, mental state, family background (keeping in mind that some children participating in or availing a welfare scheme may have parents of ill-repute, criminal background).

Antecedents of child care workers: Given the sensitive nature of working with a vulnerable section of society – it is increasingly encouraged that NGOs verify the background of volunteers for child care services[1] to ascertain any previous offence involving a child, conviction for a sex crime, consumption of drugs and related issues.

Privacy rights of the child: The Juvenile Justice (Care and Protection of Children) Act, 2000 which prohibits the publication of name etc. of juvenile in conflict with law or child in need of care and protection involved in any proceeding under the Act, spells that:

(1) No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law or a child in need of care and protection under this Act shall disclose the name, address or school of any other particulars calculated to lead to the identification of the juvenile or child nor shall any picture of any such juvenile or child be punished:

Provided that for reasons to be recorded in writing, the authority holding the inquiry may permit such discloser if in its opinion such discloser is in the interest of the juvenile or the child.

(2) Any person who contravenes the provisions of sub-section (1), shall be liable to a penalty which may extend to ₹ 25,000.[2]

Laws relating to Children's welfare

Family Courts Act, 1984;

Hindu Minority and Guardianship Act, 1956;

Bonded Labour System (Abolition) Act, 1976;

Building and Other Construction Workers' Welfare Cess Act, 1996;

Child Labour (Prohibition and Regulation) Act, 1986;

Juvenile Justice (Care and Protection of Children) Act, 2000 *(Also refer Chapter on Indian Laws and NGOs)*;

Industrial Employment (Standing Orders) Act, 1946;

Industrial Disputes Act, 1947;

Industrial Disputes (Central) Rules;

Industrial Tribunal (Central Procedure) Rules;

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1. US Code enumerates "child care services" to cover child protective services, health and mental health care, child (day) care, education, foster care, residential care, recreational or rehabilitative programs, detention and correctional services.
2. Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

Minimum Wages Act, 1948;

Payment of Wages Act, 1936;

Employees Compensation Act, 1923;

Immoral Traffic (Prevention) Act, 1956;

Indecent Representation of Women (Prohibition) Act, 1986;

The Protection of Civil Rights Act, 1955;

The Protection of Human Rights Act, 1993;

The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (*Also refer Chapter on Indian Laws and NGOs*).

Select NGOs on Children's Rights

1. **HAQ Centre for Child Rights** (established in 1999)

Focus of activity/Objectives: Realisation of human rights of children through policy, law and action. Works with rights to survival and equal opportunity; Children in armed conflict; reporting and monitoring on the UNCRC; children and education; environment and habitat; sexual exploitation of children; street children; child labour and working children.

Address: 208 Shahpur Jat, New Delhi – 110049 (India)

Phone: 00-91-11-26490136 Fax: 00-91-11-26492551

E-mail: haqcrc@vsnl.net

2. **Children in Domestic Work** (established in 1996)

Focus of activity/Objectives: Mainstream education, crisis intervention; sexual exploitation of children; children living with HIV/AIDS; participation of children in decision making; child labour and working children.

Address: St. Mary's Apartments, 204–A, Nesbit Road, Mazagon, Mumbai – 400010

Phone: 00-91-22-3780903 Fax: 00-91-22-3771131

E-mail: jeanne@bom8.vsnl.net.in

3. **Hamara Club** (established in 1989)

Focus of activity/Objectives: Development and empowerment of street children and working children, protection and promotion of their rights, public awareness on related issues, networking with municipalities, judiciary, police and other NGOs.

Address: Gilder Lane Municipal School, Room No 27, Mumbai Central, Mumbai – 400008.

Phone: 00-91-22-3054108 Fax: 00-91-22-3054108

E-mail: hamara-club@rediffmail.com

Website: www.cozucare.org/ngos/hamaraclub

4. **NGO Forum for Combating Sexual Exploitation** (also known as Orissa State Volunteers and Social Workers Association) (established in 1998).

Focus of activity/Objectives: Reporting and monitoring on the UNCRC; education; Sexual exploitation of children; children's health; children living with HIV/AIDS; street children; child labour and working children; lobby governments and the United Nations; provide training or education on child rights; undertakes legal casework on behalf of children; research child rights; work in partnership with organisations; work with media and press.

Address: c/o OSVSWA, 49, Dharma Vihar, Bhubaneswar – 751030, Orissa.

Phone: 00-91-674-2351785 Fax: 00-91-674-2470867

E-mail: osvswa@rediffmail.com

5. VOICE (started in 1991; registered public trust)

Focus of activity/Objectives: Welfare of street children by educating them. Reaches out to shoe-shine boys, rag-pickers, coolies, flower-sellers, sweepers, and beggars; aiming to mould them into responsible, integrated citizens.

Address: C-2, Triveni, Gilbert Hill, J.P. Road, Andheri (West), Mumbai – 400058

Tel: 00-91-22-26244304

E-mail: voice@voiceofchildren.org

6. People's Association for Rural Women Development Trust

Focus of activity/Objectives: To improve the lot of rural women and children; children with disabilities; children and education; children and health; participation of children in decision making; child labour and working children; provide training or education on child rights; undertakes legal casework on behalf of children; research on child rights.

Address: Valayankulam & Post, Via Postal Training Centre, Madurai – 625022 (Tamil Nadu).

7. Delhi Council for Child Welfare

Focus of activity/Objectives: Creche facilities in slum areas; mid-day meal, regular medical check-ups and a non-formal education; orthopaedic centre for mentally and physically handicapped children; special education for mentally retarded and handicapped children; specialist training for 'Anganwadi' workers to help mothers and children in the community; home for abandoned children that locates adoptive families, finds placements and helps return children to their families.

Address: Qudsia Gardens, Civil Lines, Delhi – 110054.

Phone: 00-91-11-3968907 Fax: 00-91-11-2944655

E-mail: palna@bol.net.in

8. National Association for the Blind

Focus of activity/Objectives: Works to integrate blind children into society by empowering them with relevant skills; educational facilities for blind children (talking book library; hostel; computer-training); vocational training for the blind.

Address: Braille Press, Sector 5, R.K. Puram, New Delhi – 110010.

Telephone: 00-91-11-6176379 or 6175886

Email: nab@vsnl.com

9. Indian Council for Child Welfare

Focus of activity/Objectives: Development of disadvantaged children in child right issues like child labour, female infanticide, child abuse, early childhood care and education through direct intervention programmes with children training, advocacy and action-oriented research.

Address: No. 5, 3rd Main Road, West Shenoy Nagar, Chennai – 600030 Tamil Nadu.

10. Deepalaya

Focus of activity/Objectives: Integrated urban and rural development which focuses on children.

Address: 2nd Floor, GN-12, Shivaji Enclave, New Delhi – 110027, India

Tel: 011-5447561, 5193586 Fax: 011-5434790

E-mail: p-dp-delhi@plan.geis.com, Communication@Deepalaya.org

Website: www.deepalaya.org, www.seekindia.com/deepalaya.cfm

11. EOTO – Each One Teach One Charitable Foundation

Focus of activity/Objectives: Working for underprivileged children from municipal schools; focuses on their academic growth; prevents dropouts from municipal schools; provides nutritious food, uniforms, books and basic computer training.

Address: 32 Gope Nivas, 275 Sion East Road, Mumbai-400022 Maharashtra.

Phone: 022-4094510 Fax: 022-4017430

Website: www.eachoneteachone.org

12. Children's Film Society (founded in May, 1955)

Focus of activity/Objectives: Undertakes and organises production, distribution and exhibition of feature films for children to provide them healthy and wholesome entertainment with an aim to enhance their knowledge, develop their character, broaden their perspective and help shape them into useful citizens of modern India.

13. CRY (Child Relief & You)

Address: DDA Slum Wing, (Bharat Ghar), Bapu Park, Kotla Mubarakpur, New Delhi – 110003.

Phone: 24693137/4790/3159 Fax: 011-24632302

E-mail: cryinfo.del@crymail.org

14. Central Adoption Resource Agency (CARA)

Focus of activity/Objectives: News, guidelines for child adoption & contacts.

15. Children Toy Foundation

Focus of activity/Objectives: Organisation with an aim to develop toy library for the poor and deprived children.

16. SOS Children's Village of India: Organisation for orphaned and abandoned children

17. Child Workers in Nepal (*Nepal*) (established in 1987).

Focus of activity/Objectives: Main concerns – child labour, street children, child marriage, bonded labour, trafficking of children, children in armed conflict; sexual exploitation; participation of children in decision making; legal cases on behalf of children; research on children's rights; lobby governments and United Nations.

Address: P.O. Box 4374 Rabi Bhawan, Kathmandu, Nepal.

Phone: 00-977-1278064 Fax: 00-977-1282255

E-mail: cwin@mos.com.np

Website: www.cwin-nepal.org

18. Defence for Children International (*Sri Lanka*) (established in 1993)

Focus of activity/Objectives: Practical, systematic and concerted international action specially directed towards promoting and protecting the rights of children; reporting and monitoring on the UNCRC.

Address: 37, Mihindu Mawatha, Colombo 12, Sri Lanka

Phone: 00-941-390092 Fax: 00-941-390092

E-mail: dcilanka@sltnet.lk

19. Underprivileged Children's Educational Programmes

Focus of activity/Objectives: (*Bangladesh*) (established in 1972) Focus on education and technical training assistance in job placement assistance for students; integrated support to underprivileged working children.

Address: Plot No. 2&3, Mirpur-2, Dhaka 1216, Bangladesh.

Phone: 00-880-28011014-16 Fax: 00-880-28016359

E-mail: ucep@citechco.net

Website: www.ucep-bd.org

20. Christian Children's Fund Inc. (*Sri Lanka*) (established in 1985)

Focus of activity/Objectives: Children in armed conflict; Children with disabilities; education; environment and habitat; health; participation of children in decision making.

Address: 48, Vajira Road, Colombo 4, Sri Lanka

Phone: 00-941-501238 Fax: 00-941-552909

Email: slnocol@sri.lanka.net

Website: www.christianchildrensfund.org

21. M. Venkatarangaiya Foundation—

Brief Profile:

- MV Foundation's approach is based on a firm conviction that no child works and that all children in the 5-14 years age group must be in school.

In other words it recognizes the inextricable link between the program for universalisation of education and abolition of all forms of child labour.

- It follows an 'area-based approach' as against a target based approach. It seeks to address the rights of the entire universe of children—both in school and out of school in the 5-14 years age group in its area of operation.

Outreach in A.P., M.P., Maharashtra, Tamilnadu, Bihar, Rajasthan

Address:

201, Narayan Apartments,

West Marredpally,

Secunderabad - 500026, AP India.

Phone: +91 (40)2780-1320

Fax: +91 (40)2780-8808

Website: www.mvfindia.in

E-mail: mvfindia@gmail.com

22. Pratham: Universalisation of Primary Education

Every child in school and learning well

Aim: Every child in the education net, thereby eliminating child labour.

Website: www.pratham.org

Contact Addresses:

Mumbai:

Pratham Mumbai, Above Adarsh Mithai Mandir,

Oswal Bhavan, Tardeo Road, Nana Chowk,

Mumbai 400 007

Tel. No. - (91) (22) 23851542

E-mail: mumbai@pratham.org

PCVC (Pratham Council for Vulnerable Children)

Pratham Mumbai,

3rd Floor, Above Adarsh Mithai Mandir,

Oswal Bhavan, Tardeo Road, Nana Chowk,

Mumbai - 400 007

Contact Persons:

Kishore Bhamre

Vikas Sawant

Tel. No. -(91) (22) 23851542

E-mail: pcvc@pratham.org

Delhi:

Pratham Resource Centre.

Basement floor, A-1/7 Safdarjung Enclave (Near Kamal Cinema Complex)
New Delhi- 110029
Tel. No. - (91)(11)26716083/84
E-mail: info@pratham.org

23. AVANI

Brief Profile:

Working directly with children, involved in rescue of child labourers & imparting education to them.

Contact details:

Sangli Office: 14/51, Gokak Sadan
Kala Nagar, P. Box: 49.
Sangli 416416 Maharashtra State INDIA
Ph: +91-233-2310288
Fax: -91-233-2310288
Kolhapur Office : "AVANI",
Plot No.-R 544-545,
Jeevba Nana Park, Radhanagari Road
Kolhapur 416 002
E-Mail: info@verala.org
Web Site: http://www.verala.org
Chairman: Mr. Arun Chavan
Vice-chairperson : Mrs. Anuradha Bhosle
U.K. Co-ordinator : Dr. Gopinath Chandroth

24. Prayas, New Delhi

Prayas Institute of Juvenile Justice

Address:
59, Tughlakabad institutional Area,
New Delhi- 110062
Telefax: 29956244, 29955505
Email: prayas@del6.vsnl.net.in
Website: http://www.prayasonline.org

25. Sneh Prayas

(Gujarat Chapter of Prayas, New Delhi)

Address:
3-4, Manmohan Complex
B/h Navrangpura Police Station Navrangpura Village
Navrangpura, Ahmedabad-380009.
Telefax: 0091-79-26461777
E-mail: info@snehprayas.org
Website: www.snehprayas.org

26. Voluntary Health Association of Tripura

Brief Profile:

Reduction of Child Violence including Trafficking and Child Labor by involving Faith Leaders.

Panchayats, ICDS Workers, BSF and Media.

Contact:

Sreelekha Ray

Executive Director

Voluntary Health Association of Tripura (NGO)

E-mail: vha_tripura@rediffmail.com

Website: http://www.vhatripura.org

27. Centre for Health Education, Training and Nutrition Awareness (CHETNA)

Address:

B-Block, IIIrd Floor, SUPATH II, Opp. Vadaj Bus Terminus, Vadaj, Ashram Road, Ahmedabad 3800013, Gujarat, India

Tel No.: + 91 - 079 - 27569100 -101

Email: chetna@icenet.net

Website: www.chetnaindia.org

28. PRARABDHA - PRARABDHA Samiti

Address:

232, Trimurti Nagar,

Dhar–454001 (M.P.) INDIA

Phone: +91 7292 235220, +91 94250 46220

175, KA. MA. MAN.

Savn pada, Sanswara,

Banswara - 327 001 (Rajasthan)

Near Police Line, Sant,

Santranpur-389 260 (Gujrat)

Phone - +91 99041 23346, +91 98797 23977

E-mail: prarabdha_ngo@rediffniail.com

Website - www. prarabdha.org

29. Bachapan Bachao Andolan

The organiser/leader of Global March Against Child Labour

Brief Profile:

- Vision: To create a child friendly society, where all children are free from exploitation & receive free and quality education.
- Active in States of Bihar, Madhya Pradesh, Rajasthan, Uttar Pradesh and also in Delhi, Jharakhand & Ranchi.

Central Office:
L-6, Kalkaji,
New Delhi-110019, India
Phone: 91 11 2647 5481, 2622 4899
Mobile: 9212089894, 9212023778
Fax: 91 11 2623 6818
E-mail: info@bba.org.in
Website: www.bba.org.in

State Offices:
RAJASTHAN

Bal Ashram
Virat Nagar, Jaipur (Raj.)
Phone: 91 1422 234095
Mobile: 9829166505

BIHAR
4th Floor, Krishna Building,
S.P. Verma Road, Patna (Bihar)
Phone: 0612-2230938
Ward No. 12, Batraha,
Saharsa, Bihar
Phone: 91 6478 225326
Mobile: 09431670031

MADHYA PRADESH
1/2, Shanti Kunj, Bhagwat Nagar,
Ramtekari, Mandsaur (M.P.)
Phone: 9425107794

UTTAR PRADESH
Vill & P.O.-Jaanikhurd
Meerut (U.P.)
M- 9411616972
Umashankar Yadav
Vill & P.O.-Mundera
Kushinagar (U.P.)
M- 9451473510

JHARKHAND
New Colony, Behind Tillaiya PS.
Jhumri Tallaiya, Kodarma.
Jharkhand
M- 9931106106

30. Dakshini Rajasthan Mazdoor Union (DRMU)

Brief Profile:

Campaigning extensively against child labour through awareness campaigns of NREGA among people (provisions of the NREGA and the rights and entitlements of the people) in co-ordination with the Vagad Mazdoor Kisan Sanghathan (VMKS), a partner of the Mazdoor Kisan Shakti Sanghatana (MKSS).

Address:

7 MS Building, Adarsh Nagar Link Road
Dungarpur - Rajasthan, INDIA
E-mail: sudrak@sancharnet.in

31. CREDA (Centre for Rural Education and Development Action)

- Initially CREDA aimed at abolition of worst forms of child labour through education and social mobilization. Later, children drawn from all types of work were considered as working children and targeted for their empowerment through education, social mobilisation and community participation.
- Empowerment of rural women is also given priority. The NGO's work focuses on child labour related activities. It has undertaken projects for the elimination and rehabilitation of child labour around Varanasi (Uttar Pradesh).

Contact:

Shamshad Khan
490, Awas Vikas Colony
Mirzapur- 231001
Uttar Pradesh
Tel: +91-5442-62285
E-mail: samshad@sancharnet.in
we@credaindia.org
Website: www.credaindia.org

32. Center for Peoples Development (CPD)

Address:

B-129, BDA Duplex, Baramunda,
Bhubaneswar- 751 003 (Orissa)

Contact:

Jyoti Mahapatra
Chairperson
Mob. No. : +91 94370 27569
E-mail: jyotimahapatra@cpdindia.org

33. World Vision India

Brief Profile:

World Vision conducts nine special initiative programmes, targeting in particular street children, bonded child labourers and child victims of sexual exploitation.

Address:

B-3, Lajpat Nagar-II

New Delhi - 110024

India

Tel: +91-11-6831168

Website: www.wvi.org

34. Center for Sustainable Human Development

Brief Profile:

- Rescue of bonded child labourers in Chennai.
- Coordinates through networking in Campaign Against Child Labour (CACL).

Address:

Sapthamaliga Apartment,

2nd Floor, 'C' 188, Poonamallie High Road,

Kilpauk, Chennnai - 600 010. S.India.

Phone: 91-44-26651792, Fax: 91-44-26651792

E-mail: info@saaral.org

Website: www.saaral.org

35. Save the Children, Bal Raksha, Bharat

Brief Profile:

World Vision conducts nine special initiative programmes, targeting in particular street children, bonded child labourers and child victims of sexual exploitation.

Contact:

4th Floor, Farm Bhawan,

14-15 Nehru Place,

New Delhi - 110019

India

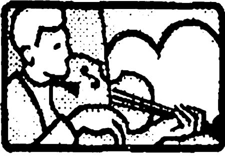
Tel: (+91) 11 42294900

Fax: (+91) 11 42294990

E-mail: info@savethechildren.in

Website: www.savethechildren.net/india

(IV) CULTURE



An NGO promoting Indian culture essentially seeks to encourage Indian freedom of expression. Promoting culture encourages links between various sections of society rural, urban, rich, poor, Christian, Hindu, Muslim, educated, across our geographic boundaries. Showcasing culture fosters understanding of Indian culture, business and government. Constructive social change is emphasised; so also positive women's role models, increased participation in sports, dance techniques, drama, puppetry, museums. It enables disabled to participate in the international Art & Cultural Festivals. Also revives dying Indian traditions and effectively connects the fields of art, the genres and the country.

Legal Aspect

By "Indian Culture" it is generally understood that only the legal, good, positive, forward looking ideas, concepts portraying men, women and children in a positive light are promoted by an NGO and there is no scope for illegal objectives or propounding negative roles for Indian citizens.

Respect for National Flag: NGOs involved in promoting Indian culture (be it in the form of music, dance, drama, puppetry) cannot deliberately insult national symbols or show disrespect[1] to the National Flag. The Prevention of Insults to National Honour Act (1971)[2] says the flag cannot be mutilated, burned, defaced, torn or trampled upon. Offenders can be jailed for up to three years or fined. But it does not prevent anyone from flying the flag in a respectful manner.

Don't bad-mouth honest folks (Defamation): Performers can be hauled into a court for defamation[3] where a citizen's name and character (even company can take legal action for defamation) have been defamed[4] publicly (also by means of published material). A true imputation concerning any person made for public good is an available defence under Indian Penal Code against defamation charges.

Religious Sentiments: The Constitution of India mandates freedom of religion. Therefore, an NGO is entitled to promote the values and principles of a specified religion but that is no license to run-down another religion and this can only lead to violation of the Constitution and communal tension thereby defeating the call and purpose of an NGO (promoting Indian Culture based work) as a 'cultural diplomat'. Please note that it is punishable for an Indian citizen to intentionally insult a religion[5] by destroying, damaging or defiling any place of

1. Draping it over private vehicles; using it as a drapery at private funerals; printing it on a costume, cushion, napkin or handkerchief are all acts of dishonour to the Indian flag.
2. Emblems and Names (Prevention of Improper Use) Act, 1950, states that the National Flag or national emblem cannot be used for commercial purposes. Nor can it be used as packaging.
3. It is an intentional false communication, either published or publicly spoken, by words, signs or visible representations, that injures another's reputation or good name, exposing him to ridicule, scorn or contempt in respectable and considerable part of the community, diminishing the esteem, respect, goodwill or confidence in which the person is held.
4. Two reliefs available to the defamed person are – Suit for recovery of damages; and restraint by way of an Injunction under either section 58 or 59 of the Specific Relief Act, 1965 on publication of defamatory statements.
5. Section 295, Indian Penal Code, 1860.

worship or any object held sacred by any class or persons. Thus anyone who deliberately or maliciously outrages or insults the religious feelings or beliefs of another citizen, by words, signs, visible representation can face legal action[1]. If certain NGO workers mischievously disrupt or cause disturbance to a religious assembly engaged in a religious ceremony, the workers are liable to punitive action[2]. The Indian Penal Code also prohibits NGO workers from doing certain acts like uttering words, making sounds or gestures directed at a person with the deliberate intention of wounding the religious feelings of that person[3].

Don't be a Nuisance[4]: However noble the cause, an NGO's activities should not amount to being a nuisance[5] under the law of torts. This would also extend to conduct which is offensive, obscene, usage of abusive language, boisterous behaviour – tending to reasonably arouse alarm, anger or resentment in others and injury to public property. Being a public nuisance or working against public policy can result in the Court directing dissolution of the NGO.

Intellectual Property: A museum, gallery, dance show, recorded or live music, articles – these are areas where there is scope for rampant misuse/abuse and/or lifting of intellectual property rights of copyright, trademarks and patents. What a copyright law controls or states is that the author is the owner of the work and determines how it can be used. That includes the reproduction, distribution and public display of a work. Motion pictures and sound recordings in instructional videos are protected by copyright. Any broadcast, public performance, diffusion, copying, hiring, lending, or editing is prohibited unless expressly authorized. This prohibition can, and will be enforced by legal action. Care should be taken to take permission wherever a pre-requisite for using the intellectual property rights of another.

Valid Documents: When a voluntary organisation sends its members abroad for participation in seminars, think-groups, discussion forums, festivals, dance, music, sports events – it is to be ensured that the individuals have valid documents (authentic passports, identity cards) relevant permissions and authorizations (including sponsorship letters) justifying the participation of the candidate in the event.

Laws relating to Indian Cultural Heritage

The Ancient Monument and Archaeological Sites and Remains Act, 1958;

The Ancient Monuments Preservation Act, 1904;

The Antiquities and Art Treasures Act, 1972;

The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974;

Prevention of Insults to National Honour Act, 1971.

1. Section 295A, Indian Penal Code, 1860.
2. Section 296, Indian Penal Code, 1860.
3. Section 298 of the Indian Penal Code, 1860.
4. 'Nuisance' is an act or omission which must cause any common injury, danger or annoyance to the public, or to the people in general who dwell or occupy property in the vicinity, or must necessarily cause injury, obstruction, danger or annoyance to any person who had rights to use.
5. Whoever causes nuisance is liable to be punished with imprisonment, or fine, or both depending upon the discretion of the court.

(V) DISABLED



........We take these truths to be self-evident, that all men are created equal, and that they are endowed by their creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness.

(From American Declaration of Independence of 1966)

To create barrier free environment for persons with disability and to make special provision for the integration of persons with disabilities into social mainstream apart from the protection of rights, provision of medical care, education, training, employment and rehabilitation are the prime objectives of Persons with Disabilities (Employment Opportunities, Protection of rights, and Full Participation) Act, 1996. The Rehabilitation Council of India Act, 1992 sets a standard of quality in rehabilitation professionals. Only those possessing degrees from universities and institutions recognised by the Council can be registered with the Council[1]. Persons not registered are expressly barred from working as a rehabilitation professional. However, where professional skill has been gained by extensive experience and not a degree or such like qualification – the professionals are encouraged to take a bridge course and then register themselves thereafter. Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 is the third relevant piece of legislation in this category of NGO work.

A large population of the disabled are so on account of an injury at their workplace. However, neither the Employees Compensation Act, 1923 nor the Employees' State Insurance Act, 1948[2] provide for rehabilitation of injured work force, there is no scheme for alternative employment to the disabled.

Facilities for Disabled

Javed Abidi v. *Union of India*, AIR 1999 SC 512: 1999 AIR SCW 111: (1998) 1 SCC 467 – The *Abidi* case pointed out the absence of ambulifts at airports and aisle chairs in aeroplanes – which violated the right granted in terms of section 44 of the Persons with Disabilities Act. Section 44 requires establishments in the transport sector to adapt rail compartments, buses, vessels and air crafts in such a way as to permit easy access to persons with disability. (This requirement is to be fulfilled within the limits of their economic capacity). The State agreed to provide aisle chairs in airplanes and ambulifts at all major airports.

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1. Section 13(1) of the Act.
2. Disablement Benefit under the Employees' State Insurance Act, 1948. An insured person is entitled to disablement benefits if he:
   (a) suffers from employment injury and
   (b) the injury clause (I) temporary disablement not less than 3 days' (excluding day of accident); fulfils other eligibility conditions.

Legal Aspect

Protection against exploitation and discrimination, all treatment of abusive or degrading nature;

Shall be enabled to avail qualified legal aid for protection of person/ property;

Where judicial proceedings are instituted, legal process takes into account their physical and mental condition.

Select NGOs on Care for Disabled

1. Helen Keller Service Society for the Disabled

Visual Impairment: Support of persons with disabilities; to implement comprehensive community eye-care services; prevention, cure, rehabilitation and promotion by establishing eye hospital at Salaigrama; vocational training and employment to the physically disabled and the visually impaired.

Address: Vizhiyagam, Viswanathapuram, Madurai – 625014 Tamil Nadu.

Phone: 0452-641446, 640735 Fax: 0452-641490

Email: hkssd@md3.vsnl.net.in

Website: www.helen-keller.org

2. Fellowship with Mentally Retarded

Mental health including Alzheimer's: Home for mentally handicapped persons; craft centre, garden and special school; printing of greeting cards.

Address: 'Asha Niketan', Nandi Bazaar, P.O. Katalur, Calicut District 673531 Kerala.

Phone: 0496-602620

3. Library Circle

Blind and Physically Handicapped Service Visual Impairment: Tuitions for disabled students; reading and scribing work for visually-impaired persons.

Address: Basheera Compound, Plot No. 7, Seventh Street, K K Road, Villipuram, Tamil Nadu.

4. National Centre for Promotion of Employment for Disabled People (registered as a Trust in 1996).

Physically Disabled: Promotes employment opportunities for disabled people; primarily involved in advocacy rather than provision of direct services – promotes productivity and self-reliance – enabling disabled people to support themselves.

Address: 25 Green Park Extn, New Delhi – 110016

Phone: 00-91-11-6854306 or 6967910.

E-mail: ncpedp@vsnl.com

5. Karaikal Mobility Training and Rehabilitation Centre for Blind

Visual Impairment: Supports equal opportunity for visually impaired and physically disabled; education, training and rehabilitation; counselling centre for AIDS, visually impaired and physically disabled.

Address: 15 Yadhaval Street, Poovarn, Karaikal –609609 Pondicherry.

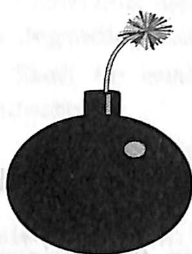
E-mail: kmtrcb@usa net.im

Model Objects of Society For Welfare of Handicapped Persons

Aims and Objects of the Society are as under:

1. To look after rehabilitation, resettlement and welfare of the handicapped citizens of India.
2. To promote co-operation among and to bring together the various Societies, Institutions, Establishments, Organisations, Associations and individuals throughout the territory of the Union of India working for the welfare of all categories of the physically handicapped.
3. To provide pre-employment training of the handicapped.
4. To establish, run, and maintain, Institutions and Workshops for training and for providing remunerative work for handicapped.
5. To take steps to create awareness amongst the public of the strengths and capabilities of handicapped individuals for work and employment and their other allied problems.
6. To provide a platform for interaction by and between industrialists, administrators, legislators, and the public at large for providing the same facilities that are available to able-bodied members of the community for the handicapped also.
7. To secure contract and sub-contract work for workshops, Industrial Homes and other Institutions of the handicapped which strive to provide work and employment for the handicapped.
8. To start, expand or develop Employment Agencies for the employment of the handicapped to take all possible steps to make such agencies effective.
9. To provide meeting places, with necessary facilities for the exchange of views between employers, employees, trade unions, welfare workers and the handicapped.
10. To develop a cadre of professionally qualified and trained rehabilitation workers and volunteers by conducting training courses and by arranging for the training of such personnel.
11. To take such other steps as may be considered necessary and expedient for training, providing work and for securing employment to the handicapped and for carrying out the above aims and objects of the Society.

(VI) EMERGENCY SUPPORT (NATURAL DISASTERS)



The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy.

—Dr. Martin Luther King Jr.

'Emergency' is a general term implying hazardous situation both inside and outside a premises.

What is a Disaster: A major accident which causes wide spread disruption of human[1] and commercial[2] activities would be called a disaster in layman terms. The disturbing feature of a disaster is its uniqueness to occur suddenly with little or no warning to prevent the occurrence. It can occur on account of Nature's tantrums which result in Water and Climate Related Disasters[3], Geologically Related Disasters[4] and Biologically Related Disasters[5] or due to man-made omissions and commissions which result in Chemical and Industrial Related Disasters[6], and Transportation Related Disasters.[7]

1990 – 2000 was declared by the UN as the International Decade for Natural Disaster Reduction (IDNDR) with a two-fold aim to (i) focus on the hardship caused by natural disasters; and (ii) requirement for remedial and/or preventive action.

In May 1994, Governments, NGOs, scientific community, business, industry and the media conducted a mid-term review of IDNDR in Yokohama[8] and the relevant review perceived that in cases of natural disasters, those affected most are the poor and the socially disadvantaged in developing countries as they are the least equipped to cope with the situation, disaster prevention, mitigation and preparedness are better than disaster response, disaster response alone yields temporary relief at a very high cost and that prevention contributes to long term improvement in safety.

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1. Effect on individuals include - loss of life, trauma, burns, injury requiring surgery, permanent or temporary handicap, poisoning or exposure to toxic material.
2. Damage to property has a long term social impact – loss of revenue, law and order problem (protection of people/goods involved), employment and high rebuilding costs leading to economic constraints are consequences thereof. Apart from effect on property, there is also an environmental effect in terms of air pollution where the disaster involves leakage of toxic gases.
3. Floods, Cyclones, Tornadoes and Hurricanes, Thunder and Lightning and Sea Erosion.
4. Earthquake, Landslide and mudflow.
5. Rodents, Mosquitoes, Flies.
6. Gas Leaks, Fire, Explosion and Chemical leakages into rivers and backwaters.
7. Road accidents, Airline accidents and ship/boat accidents.
8. Participation by NGOs of six continents.

India: Given India's unique features of its humungous population, vast geographical dimensions, and climatic conditions, natural calamities are not rare and some are even an annual recurrence[1]. The objectives of India's National Policy for natural disaster reduction[2] (NDR) is to reduce loss of lives, property damage and economic disruption. A new perspective in handling NDR is highlighted as a 'Pre-Disaster and Pro-Active Approach'.

The Indian Government strives to achieve its objectives[3] by creating Public Awareness[4] about Safety from Disasters; amending/enacting legislation[5] for safety from Hazards; planning development areas with safety from Hazards; taking steps to protect habitations from adverse hazard impacts; constructing new hazard resistant buildings.

As a general rule, volunteers[6] for NDR can be sharply divided into two categories based on their training:

(a) *Effective Intervention* - Those volunteers who have effectively training[7] in techniques of rescue, evacuation, first aid, health, sanitation and nutrition in relief camps; and

(b) *Preventive Intervention* – Those trained in fire hazard prevention and control, community hazard mapping, disaster preparedness, community-based disaster preparedness plans, family disaster plans and a working knowledge about cause and effect of hazards on population vulnerable to disasters and the remedial measures possible locally.

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1. Floods in the Indo-Gangetic-Brahmaputra plains are an annual feature in India when several hundred lives are lost; people are rendered homeless; lakhs of hectares of crops damaged; and livestock killed or injured.
2. **Earthquakes** - 12% land is liable to severe earthquakes (intensity MSK IX or more); 18% land is liable to MSK VIII (similar to Latur / Uttarkashi); 25% land is liable to MSK VII (similar to Jabalpur quake). Wind and Cyclones: 1891-1990: 262 cyclones (92 severe) in a 50 km wide strip on the East Coast; Less severe cyclonic activity on West Coast (33 cyclones in the same period) (source: Building Materials & Technology Promotion Council)
3. In order to effectively achieve NDR the GOI should provide for suitable legislation which will amend town/country Planning Acts and Master Plan Area Development Rules; provide for land use zoning in hazard prone areas and establish techno-legal regimes; incorporate safety pre-requisites in building bye-laws of local bodies/panchayats
4. In an innovative participatory example, SVG of Italy has provided training to young school children for effective search, rescue and evacuation operations in the event of disasters.
5. For example as such there is not much regulation or restriction on operating boats - Panchayats collect certain taxes but are not able to enforce safety and security norms. Only licensed operators ought to be allowed, and periodical checks to be conducted especially whether the boats have life saving equipments on board or not.
6. Volunteers - These include members of the community and they are expected not to have any bias towards sex, religion, etc. Groups can be formed even at school level as Junior Red Cross or the Scouts. Children above 18 years of age are considered adults, responsible enough for their own actions and can participate as volunteers.
7. Training is provided by Defence forces, Fire Services, health officials, and Relief Departments, Disaster Management Centres and voluntary organisations like Red Cross, Scouts & Guides, and nursing services.

Legal Aspects

Agreement for intervention in disaster/relief work: Depending upon an NGO's resource mobilisation capacity, an NGO can ideally intervene in local situations. Please note that it is advisable to have in hand a legal document in the nature of an agreement *vis-a-vis* the local agencies/administration/government.

Insurance of volunteers and equipment: Further it is of utmost necessity given the nature of the activity of disaster management and emergency relief to obtain an insurance cover for each member of the team (and expensive equipment).

Indemnity against loss: Again considering that it is essentially a rescue mission in most cases, it is advisable that the NGO obtains an indemnity for losses on account of the acts of omission or commission performed in discharge of the duties assigned to the team members.

Select NGOs of Disaster Management

1. Care

Focus of activity: Response to natural disaster that cause human suffering and the loss of support systems and livelihood such as infrastructure, property, crops and livestock. Provision of relief; programmes on disaster preparedness, rehabilitation and development during the post-disaster phase.

2. Cause & Effect

Focus of activity: Gujarat earthquake, Orissa cyclone, donations, relief work, save a life.

3. International Society for Krishna Consciousness

Focus of activity: Organisation providing free food distribution and relief rehabilitation.

4. Volunteers for India Development and Empowerment

Focus of activity: Working for sustainable development & assists in relief of disaster victims

5. Joint Assistance Centre

Joint Assistance Centre (JAC) (established in 1978 and is a registered society)

Focus of activity: Assistance in disaster situations; building people's capabilities to cope with the problem, primarily through training and education programmes.

Address: G-17/3 DLF City-1, Gurgaon – 122002, Haryana,

Tel: 26353833/26352141 Fax: 26351308

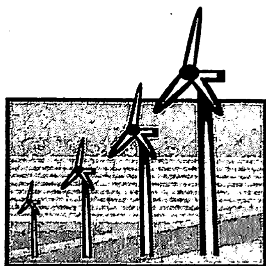
E-mail: jacindia@mantraonline.com

6. Gujarat State Disaster Management Authority

Gujarat State Disaster Management Authority (GSDMA) (established on February 8, 2001 and is registered as a charitable institution under the Societies Registration Act, 1860).

Undertakes social and economical activities for rehabilitation & resettlement of affected people (includes new Housing, Infrastructure, Economic Rehabilitation, Social Rehabilitation); Programmes and plans to mitigate losses on account of disasters; Research on causes for losses due to natural disaster; organise funds for rehabilitation and resettlement; to manage Gujarat Earthquake Rehabilitation and Reconstruction Fund; Management, Administration, Investment & Reinvestment of funds out of sale proceeds received from the sale of land, buildings, equipment, furniture, fixtures, debris or infrastructure; nodal agency to coordinate issues on maintenance of hygienic living conditions, welfare of victims, environmental maintenance and such other welfare measures, as may be assigned to the deserving authority.

(VII) ENVIRONMENT AND WILDLIFE



Human beings have a birth right to air and light which are natural rights. Indian Easements Act, 1882 accords statutory recognition to an individual's right to receive air and light as well as customary rights. In terms of section 2(a) of the Environment Protection Act, 1986 "environment" includes water, air and land and the relationship which exists among and between water, air and land, and human beings and other living creatures, plants, micro-organisms and property.

Discussed below are environmental cases fought by NGOs to maintain, protect and develop the environment.

Nature Lovers Movement v. *State of Kerala,* AIR 2003 Ker 18: 2002 (2) Ker LT 881

This Public Interest Litigation under Article 226 of the Constitution was filed by a society whose focus area was preservation and conservation of nature and natural resources. The State Act called the Kerala Private Forest (Vesting & Assignment) Act, 1971 provided for the vesting of private forests[1] of Kerala in the State Government with the primary intention to utilise these lands properly to increase the agricultural production in Kerala and promote welfare of the agricultural population in Kerala, including assignment of these forest areas to agriculturists and agricultural labourers for cultivation.

Section 10 of the State Act provides for assignment of private forests on registry or lease to (a) agriculturists; (b) agricultural labourers; (c) Scheduled Caste and Scheduled Tribes who are willing to take up agriculture as livelihood; (d) unemployed young persons belonging to families of agriculturists and agricultural labourers. However, section 2 of the Central Act called the Forest (Conservation) Act, 1980 placed 'restrictions on the dereservation of forests or use of forest land for non –forest purposes' except with the prior consent of the Central Government. Clause (iii) of section 2 expressly stated the prior consent requirement before assignment of any forest land or portion of the forest land by a lease or otherwise to any private person or to any authority, corporation, agency or other organisation not owned, managed or controlled by the Government. In view of this, the Kerala High Court held that those forest lands which have been legally vested in the Kerala Government cannot be assigned by the Government to any third party without the prior consent of the Central Government, as a result of the overriding provision of section 2 of the Central Act.

Chhetriya Pardushan Mukti Sangharsh Samiti v. *State of Uttar Pradesh,* AIR 1990 SC 2060: (1990) 4 SCC 449: JT 1990 (3) SC 685.

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1. In terms of section 2(f) of the Act, "private forests" exclude certain lands such as those used principally for cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon and lands used for ancillary purposes of such cultivation or preparation of the same for the market. Further, the *Explanation* hereto states that lands used for the construction of office buildings, godowns, factories, quarters for workmen, hospitals, schools and playgrounds are lands used for ancillary purposes of cultivation.

The writ petition by the plaintiff organisation alleged that smoke from chimney of certain mills and effluents discharged from plants were causing environmental pollution and were an environmental hazard, causing difficulties for people to eat and sleep due to the smoke and foul smell.

Therefore, directions were sought to check the pollution. However, owners were found to be complying with the statutory requirements and the allegations were on account of past animosity. Supreme Court's duty to uphold and enforce Fundamental Rights also implies the duty to ensure that there is no misuse by the so-called protectors.

Banwari Seva Ashram v. *State of Uttar Pradesh,* AIR 1987 SC 374: (1986) 4 SCC 753: 1987 (1) SCJ 203

A writ petition under Article 32 as Public Interest Litigation by the Ashram on behalf of local Adivasi people who were protesting against reservation of forest land by State. The Adivasi people had lived in or near the forest for generations and enjoyed forest products namely fruits, vegetables, fodder, fuel wood. Violation of Article 21 was argued, State had sought to evict and restrain from enjoying the forest produce. State required the disputed land for NTPC for an electricity generation project. In view of the national importance of the project, Supreme Court allowed acquisition of the land by the State while observing the following:

> "Indisputably, forests are a much wanted national interest. On account of the depletion thereof, ecology has been disturbed, climate has undergone a major change and rains have become scanty. These have long term adverse effects on national economy as also on the living process. At the same time, we cannot lose sight of the fact that for industrial growth as also for provision of improved living facilities there is a great demand in this country for energy such as electricity. In fact, for quite some time the entire country in general and specific parts thereof, in particular have suffered a tremendous set back in industrial activity for want of energy. A scheme to generate electricity, therefore is of national importance and cannot be deferred." The court had balanced ecological and development imperatives and gave prominence to development.

The Goa Foundation v. *Konkan Railway Construction Corporation,* AIR 1992 Bom 471: 1994 Mah LJ 21

Petitioner (society registered under the Societies Registration Act) with objective to protect and develop the natural environment forests, lakes, rivers, wildlife and have compassion for wildlife filed a writ petition under Article 226 claiming that Konkan Railway Corporation project by laying new railway line was destructive to the eco-system and was violative of citizen's rights under Article 21 as it involved cutting of trees, a lake would be covered which would prevent migratory birds from visiting Goa. The Bombay High Court pointed out that—

- Development was not possible without some adverse effects on ecology and environment;
- Projects of public utility cannot be abandoned;

- It was necessary to adjust the interest of the people and interest of environment;
- Balance between the interest of people and environment to be determined and left to persons familiar and specialised in the field;
- Environment Protection Act does not bind the construction or maintenance of a railway line. Section 11 of the Railway Act, 1989 "Notwithstanding anything contained in any other law, the Railway Administration may, for the purposes of constructing or maintaining a railway, make or construct in or upon, across, under or over any lands, or any streets, hills, valleys, streams, or other waters, rivers as it may think proper.

In *M.C. Mehta* v. *Union of India*, AIR 2004 SC 4016: 2004 AIR SCW 4033: 2004 (3) CLJ 199 (SC), which was a Public Interest Litigation, the Supreme Court found that the mining activity in area upto 5 kilometers from the Delhi-Haryana border on the Haryana side of the ridge and also in the Aravalli Hills causes environment degradation and issued directions and guidelines for the protection of the environment to the concerned authorities. The Court held that no mining activity could be carried out on area over which plantation has been undertaken under Aravalli Project by utilisation of foreign funds and that the mining activity can be permitted only on the basis of sustainable development and on compliance of stringent conditions. The Court also observed that the Aravalli Hills Range had to be protected at all costs but found that despite stringent condition, there was an adverse irreversible effect on the ecology in the Aravalli Hills Range area. Therefore it opined that at a later date the total stoppage of mining activity in the area might have to be considered. The Court directed that the mining activity to continue only on strict compliance of the stipulated conditions.

Relevant laws relating to Environment & Wildlife



Air (Prevention and Control of Pollution) Act, 1981
Air (Prevention and Control of Pollution) Rules, 1982
Environment (Protection) Act, 1986
Forest (Conservation Act, 1980)
Prevention of Cruelty to Animals Act, 1960
Wild Life (Protection) Act, 1972
Hazardous Wastes (Management and Handling) Rules, 1989
Water (Prevention and Control of Pollution) Act, 1974
Water (Prevention & Control of Pollution) Cess Act, 1977
Water (Prevention and Control of Pollution) Rules, 1975
The Cattle-Trespass Act, 1871



And Suddenly all noble thoughts of saving the tiger, deer, chiru disappear.....

Select NGOs on Environment and Wildlife

1. Enviromedia

Focus of activity: To create eco-awareness, impart science education, train young communicators through the use of mass-media; Song-dance-drama-mime-poem, radio spots, video shorts, prepared for UN, Govt. of India, schools, colleges, social and cultural organisations.

Address: 139, Venus Apartments, Sunder Vihar, New Delhi – 110087.

Phone: 011-25589909 Fax: 011-25585397.

2. EEG – Energy Environment Group

Focus of activity: Environmental awareness, promoting traditional knowledge, Panchayati Raj, rural energy, enterprise development and appropriate technology; runs a Rural Technology Demonstration-cum-Training Centre recognised by the National Research Development Centre .

Address: PO Bag No. 4, H-12 ODS, Lajpat Nagar IV, New Delhi–110024

Phone: 011-26233221 Fax: 011-26420664.

Email: eeg@sdalt.ernet.in

3. Energy Environment Group

Focus of activity: Ecology and environment including pollution control.

Address: Vikas Sadan, Village Nari, PO Dera Baba Rudru, Una Dist., Himachal Pradesh.

(VIII) FAMILY PLANNING



The term 'Family Planning' brings to mind China's baby boom and its valiant attempts at population control[1]. A drastic change has been implemented by People's Republic of China with the Law on Population and Family Planning, 2002 which prescribes the 'one-child'[2] norm. The law (here playing the role of "womb police") prescribes benefits for married couples having only one-child in their lifetime (and having more than one child as a criminal act, punishable by way of a fine for those who do not fit within the limited exceptions). In India the method of family planning leans towards one of coercion with choice. For rural Indian families, survival is often dependent upon having enough labour and having more children is well worth the risk of any fine, if sought to be imposed at a given point of time.

Nature of voluntary work in India: Local voluntary groups motivate people to avail of clinical and non-clinical services at the specified clinics, and to advocate issues pertaining to sexual and reproductive health, promotes the concept and benefits of small family norms, and supplies contraceptives and other health items by a network of social marketing. Mobile health units reach out to people in distant areas and the major beneficiaries of this are women who find a remedy for their gynaecological problems in the village itself. Information (dissemination of knowledge by way of advertisements[3], brochures, etc.), education and communication are important components of the voluntary work in Family Planning. Posters, pamphlets and books on birth control are widely used and the same can be requisitioned by people from them.

Legal Aspect

Legal Duties of Family Planning Volunteers: Family Planning service providers who commit malpractice or who delay emergency response, diagnosis or treatment with dire results shall be held liable under the applicable laws and regulations.

Voluntary Participation: Acceptance by any individual of family planning services/information (including educational materials) is usually a voluntary act and the organisation ought not to make the same a prerequisite to eligibility for or receipt of any other service or assistance from, or to participation in, any other programme of that organisation which provided the service/information.

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1. Besides China and India; Indonesia, and Mexico also have rapidly growing populations.
2. Population and Family Planning Law of the People's Republic of China (Unofficial Translation) Recognition and reward for couples who practice family planning (Article 23); Facilitation of family planning programmes with social security arrangements providing basic old-age insurance, basic medical insurance, childbearing insurance, and welfare benefits (Article 24); Longer nuptial and maternity leaves for those who marry late and delay childbearing are entitled to (Article 25); "Certificate of Honour for Single-Child Parents" (Article 27).
3. In terms of the Service Tax: Statutory Provisions, 1994 (Chapter V of the Finance Act, 1994) "Advertisement" includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas.

Certain commissions and omissions of staff in the course of carrying out family planning activities can be prosecuted (where the act/omission constitutes a crime) in a court of law or, be subjected to penalties and confiscation of any illegal gains in a relevant case. Thus a volunteer should take care not to:

(a) Infringe a citizen's personal rights, property rights or other legitimate rights and interests; or

(b) Seek or accept a bribe (this becomes particularly relevant in cases of persuasion to conduct illegal sex-determination of the unborn child);

(c) Withhold, reduce, redirect or embezzle family planning programme funds or social compensation payments; or

(d) Distort, under-report, fabricate, modify or refuse to report statistical data on population or family planning; or

(e) Abuse his/her power, or be guilty of dereliction of duty or graft.

An NGO cannot require a volunteer/staff to participate or assist in any health service program or research activity if his/her participation would be contrary to his/her religious beliefs or moral convictions (for example: Catholics do not promote the concept of abortion.)

Legal Duties of the citizens: On the other hand those who resist or hinder family planning administrative departments and staff in the performance of their legitimate duties are liable to be a subject to criticism and may be ordered to amend their conduct. Conduct breaching public security regulations and acts constituting a crime may invite criminal prosecution.

Select NGOs on Family Planning

1. Family Planning and Medical Aid Trust

Focus of activity: Dealing with population explosion through medical services media in tribal/rural zones as well as hutment areas of Mumbai city; provides free medical facilities in conducting camps for immunisation; AIDS control project.

Address: 6, India Mercantile Mission, Madam Cama Road, Opp Regal Cinema, Mumbai-400 001 Maharashtra.

Phone: 022-2020832, 2838503. Fax: 022-2045353

E-mail:trust@giasbm01.vsnl.net.in

Website: http://www.indev.nic.in/fpmat

2. FPAI – Family Planning Association of India

Focus of activity: Supports education-cum-motivational efforts with quality family planning and mother and child health services.

Address: 26, D.N. Ramaiah Layout, P.G. Halli, Bangalore – 560020, Karnataka.

Phone: 080-3360205

(Head office at Mumbai)

(IX) HEALTH

(Physical and Mental Illness and Disease – Prevention, medication, cure)



Source of Health(y) rights for Indians – the Constitution

The Constitution of India in Article 39 (e & f) provides that the State shall direct its policy towards securing the health and strength of workers, men and women, and the tender aged children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age and strength. Further that children are given opportunities and facilities to develop in healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Article 42 provides that the States are to make provisions for securing just and humane conditions of work and maternity relief.

For NGOs working in the health sector, networking and maintaining the right combination of mental health professionals, volunteers working in the community, physicians, nurses, police, teachers, counsellors, clergy and youth workers is essential in order to effectively provide assistance and care to needy persons. NGOs working in Indian Health care services sector have ample legislation to provide, protect and promote the health and well being of Indians.

Legal aspects on Health Care

(a) Liability of Hospitals and Dispensaries: A 'Health care establishment[1]' includes hospitals, nursing homes, health care centres, clinical laboratories, blood banks, polyclinics. Legal liability can be constitutional, criminal, civil, contractual or under consumer law. A medical establishment can be made liable either in a principle capacity or for vicarious liability. Again, the hospital can be made liable for the acts and omissions of its employees. The usual grounds of liability are medical negligence, consent, informed consent, confidentiality and emergency care.

(b) Healthcare professionals: The personnel in a medical establishment, include, doctors as employees, nurses or health professionals as employees, doctors as consultants, nurses as trainees, junior staff, technicians and administrative staff. Healthcare professionals include surgeons, physicians, dentists, veterinary doctors, psychiatrists, pharmacists, nurses. The legal obligations of health care professional *vis-a-vis* the patients under their medical attention and the hospitals or medical institutions they represent are extended or delimited by the nature of the legal relationship with each of the parties involved. Health care professionals

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1. The Central Labour Institute, Mumbai with Regional Labour Institutes in Calcutta, Kanpur and Chennai; and the National Institute of Occupational Health, Ahmedabad with regional outfits in Calcutta and Bangalore are primarily involved in tackling issues of occupational health and safety.

can be generally proceeded against for Medical Negligence, Medical Malpractice, Consent, Confidentiality.

(c) ***Quality of health care services:*** The establishment of a professional code of conduct and a professional regulatory body for NGOs to address issues of unethical practice and poor standard of care would effectively serve to maintain quality of health care services provided by Indian NGOs. It is a patient's right to ask and confirm from doctors the actual nature of sickness, disease, the most appropriate means of cure (or preventive) and that medical instruments have been properly sterilized.

Blood safety: The high risk of HIV and Hepatitis B and C infections due to contaminated blood, blood products, surgical instruments, and needles continue to be raging issues of concern. While there are specific government directives[1] and laws prohibiting use of contaminated blood, blood products, or instruments, lack of just implementation of the laws allows offenders to escape liability.

(d) Medical Negligence and Medical Malpractice: Medical negligence and medical malpractice are two unpopular terms all medical professionals are wary of in the carrying out of their health care activities. Whilst the Hippocratic oath hold doctors to the highest levels of integrity, care and skill to be exercised in their medical work, negligence and malpractice are dark areas of the healing profession which entitle a complainant to compensation if 'reasonable care' has not been taken in his case. Refer notes on Medical Negligence and Medical Malpractice under the Chapter "NGOs and Indian Laws for manner of filing a consumer complaint for medical negligence and medical malpractice and refer Appendix on "Model Form of Complaint under the Consumer Protection Act, 1986" for Sample of a Consumer Complaint to be filed in the Consumer Forums.

(e) No discrimination: Caregivers such as doctors, nurses and counsellors are morally, ethically and legally bound to provide a standard of quality care in a non-judgmental fashion. It is unlawful for health care givers to provide and extend, health care services to citizens on the basis of their caste, creed, sex, mental soundness, status in society. All humans are equal and even foreigners cannot be discriminated for entitlement to health care services in India.

(f) Trained health care workers: Crisis support – suicide counselling, intervention skills training, care giver training, end-of life care training are necessary aspects of training for Health care workers. For example it is unlawful in India to assist suicide – therefore a person who has no training in crisis-support and intervention is not suitably qualified to handle a case of this nature and on the other hand any amateur or inexperienced handling of a crisis situation can lead to a disastrous conclusion for both the health care giver and the person receiving the assistance. Training courses for NGO workers should be designed to provide professional health caregivers the necessary knowledge and skills

1. The Central Drug Standard Control Organisation acts as the Central Licensing Approving Authority in respect of whole human blood, blood products, large volume parenterals, sera and vaccines.

for coordinating and providing quality care for the terminally ill in either an institutional or home care setting.

(g) Confidentiality duty of medical practitioners in India and Privacy rights of patients: A Medical Practitioner is prohibited to divulge information acquired in course of his profession. The Indian Medical Council Act, 1956 (section 20A) has prescribed the professional standards and a code of ethics for medical practitioners. The Code of Medical Ethics prescribes certain restrictions on physicians' disclosure of a person's personal details which include the following:

(a) Regulation 2 of the Code of Medical Ethics underlines that Respect for human dignity as the primary objective of the medical profession;

(b) Personal sharing of confidences of a patient's life to a physician should never be revealed the same is occasioned by requirement under law (Regulation 11, Code of Medical Ethics);

(c) Personal observations of the patient's habits and character by the medical practitioner also ought not to be revealed in order to maintain and protect his dignity; (d) To publish photographs or case reports of the patients in any medical or other journal in a manner by which their identity could be made out, without permission, is prohibited (Code of Medical Ethics). Exceptions to this are (1) Consent of the person himself; and (2) Examination for some other purpose other than medical care *e.g.*, for medical certificate for employment or for insurance and such like requirements; (3) where statute authorizes (*e.g.* epidemic diseases).

Privacy rights of a woman: In the case of *Neera Mathur* v. *Life Insurance Corporation of India*[1], the Supreme Court has opined that the modesty and self-respect of a lady, can preclude the disclosure of personal problems like whether her menstrual period is regular or painless, the number of conceptions taken place, how many have gone full-term, etc. Questions and inquisition of this nature are indeed embarrassing if not humiliating. Such questions were ordered to be deleted from the declaration required by the Life Insurance Corporation, to be furnished by a lady candidate.

Confidentiality for AIDS/HIV+[2]: A medical practitioner (testing centre) is required to generally keep a person's HIV status completely confidential. Nevertheless, the testing centre can legally tell the HIV+ person's parents/guardian. Insurance companies and prospective employers are also be entitled to be informed about the HIV status of a person.

(h) Death: Death is not a rare phenomenon for health care NGOs in India. Death in India can follow on account of the following reasons:

(i) Suicide (youth or adolescent trauma, rape[3], dowry related suicide, terminally ill patients);

1. AIR 1992 SC 392: 1991 AIR SCW 3002: (1992) 1 SCC 286.
2. AIDS care services in general include prevention education, access to prevention technology, voluntary testing and counselling, and care for persons with HIV/Aids.
3. For notes on NGO work on rape cases, dowry cases, please refer topics on "Child" and "Woman".

(ii) Police torture;

(iii) Starvation and/or malnutrition;

(iv) Disease;

(v) Age related;

(vi) Accidents;

(vii) Crime (murder, grievous injury resulting in death, homicide).

India does not legally permit euthanasia[1] and suicide[2] and health care professionals are required to provide the best possible end-of life care and not assist a person to die – assisting a person to die remains a controversial issue in India where in some cases relatives have requested health care professionals to stop providing life maintaining support systems (and thereby cause death of the person). All deaths are required to be registered and registration of death facilitates control programmes for infectious diseases, within the family and within the community which often depend on the death registration report for their initiation. It has been provided in section 10 of the Registration of Births and Deaths Act, 1969 that where medical facilities are available, certificate regarding cause of death shall be obtained by the Registrar of births and deaths in the prescribed form. Medical practitioners who attend upon the deceased during last illness are legally bound to issue a certificate for cause of death as ascertained by him.

Epidemics, Natural Disasters and voluntary services in India: In India, epidemics are common. NGOs play a crucial role in attending to injured humans and animals in post trauma care after the occurrence of a natural disaster like cyclones, earthquakes and man made destruction like terrorist attacks.

Water that kills: Water borne diseases, like cholera, polio, dysentery, typhoid, hepatitis and leptospirosis are main causes for epidemics in India The standards of the quality of drinking water have been legally defined in India, to strengthen safety networks. In India sanitation and sewage are two other fronts which have a cause and effect sequence for the spread of epidemics. The presence of laws like Water Prevention and Control of Pollution Act, 1974 or programmes like National Cholera Control and Polio Immunization has not made any significant difference. Refer Topic on "Natural Disasters" for a study on NGO work in this sector.

Relief to animals during Natural Calamities and Unforeseen Circumstances: In times of natural disasters like flood, cyclone, drought, famine, forest/village fires, earthquakes, landslides, heavy snowfall, hailstorm, epidemics, NGOs (with government assistance) to extend relief to animals in their jurisdiction which have been hit by a specific natural calamity.

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1. Euthanasia is the intentional killing of a person, for compassionate motives, whether the killing is by a direct action, such as a lethal injection, or by bringing about a failure in a support system necessary to maintain life.
2. State of Oregon has a relevant statute permitting doctor-assisted/physician-assisted suicide (DAS/PAS) – for a terminally ill patient.Netherlands and Belgium have legalized euthanasia and physician assisted suicide.

Drugs, Alcohol and Health Issues: Crisis Intervention and Counselling are major aspects of NGO work in drug cases and alcoholism in India. Refer Topic on "Substance Abuse" for detailed notes on drug misuse and alcoholism issues and role of Indian NGOs in this aspect.

Children's Health issues: Refer Topic on "Child" for detailed notes on children and role of Indian NGOs. Child Labour in India is a leading source of morality, injury and disease amongst children (besides malnutrition and starvation).

Public Health and Industries: In *M.C. Mehta* v. *Union of India,* (2004) 6 SCC 588: AIR 2004 SC 4618: 2004 AIR SCW 4173, the Supreme Court, on grounds of public health, directed that all industrial units that came up in residential/ non-conforming areas in Delhi on or after 1-8-1990 were to be closed down in a time bound manner. The Central Government was directed to finalise the list of permissible household industries within a period of three months. 6000 industrial units on waiting list were directed to be allotted industrial plots within one year.

The Court also directed the Central Government to finalise within six months appropriate steps to be taken for making NCR region a success for industrial activity by removing the hurdles pointed out by the industry. The Governments of the adjoining States of Uttar Pradesh, Rajasthan and Haryana were directed to extend full cooperation.

The apex court appointed a Monitoring Committee comprising: (i) Chief Secretary of Delhi, (ii) Commissioner of Police, Delhi, (iii) Commissioner, Municipal Corporation of Delhi, and (iv) Vice-Chairman of the Delhi Development Authority. This Committee was made responsible for stoppage of illegal industrial activity. It was, however, open to the aforesaid members of the Monitoring Committee to appoint responsible officers subordinate to them to oversee and ensure compliance with the directions issued. The committee was to file a progress report at least once in a period of every two months.

HEALTH IMPACTS OF CHILD LABOUR[1]

SECTOR	CATEGORIES OF CHILD LABOUR	HAZARD TO CHILD	INJURY TO CHILD
Clothing	Garment making, button making	Solvents, machinery, poor ergonomic design, emissions, noise	Trauma, repetitive strain injuries, deformities, occupational lung diseases, cancers, skin conditions
Iron and Steel	Metal work, welding, soldering, plating	Emissions, machinery, heavy metals, radiation, noise	Trauma, occupational lung diseases, cancers, neurological impairment
Glass and Ceramics	Cutting, drawing and carrying molten glass, glazing and firing ceramics	Dangerous machinery, hot kilns, fires, dust and chemicals, lead exposure	Trauma, poisoning, occupational lung diseases, heat stress, cataracts
Leather, tanning and footwear	Cutting, hammering, trimming, stitching and dyeing	Dangerous machinery, noise, exposure to chemicals and solvents, fire risk, sharp instruments	Trauma, Communicable diseases, occupational lung diseases, chemical poisoning, repetitive strain conditions, cancers
Chemicals	Matchstick and fireworks making, grinding and mixing chemicals	Explosions, fires, emissions, hazardous chemicals, gases	Trauma, bums, occupational lung diseases, poisonings, neurological impairments
Food processing	Slaughtering, cleaning carcasses, cutting and separating animal oarte	Dangerous machinery, unsanitary conditions, liquid and solid waste exposure	Trauma, infectious diseases, occupational lung diseases, repetitive strain conditions, deformities

1. Extracts from Paper submitted to the World Bank (1998) on Child Household Labour and Health by Dr. Philip L. Graitcer, DMD, MPH and Leonard B. Lerer, WorkMD, MMeD, MBA.

SECTOR	CATEGORIES OF CHILD LABOUR	HAZARD TO CHILD	INJURY TO CHILD
Farming	Farm work, care of animal, processing agricultural products	Dangerous machinery, unsafe transportation, pesticides, chemicals, long working hours, heavy loads	Trauma, occupational lung diseases, repetitive strain conditions, deformities, parasitic and other infectious diseases, dermatitis, chemical and pesticide poisoning
Household Work	Cooking, child-care, agriculture, domestic work, home based manufacture	Exposure to fire and toxic fumes, dangerous solvents, poor working conditions fatiguing conditions, physical and sexual abuse, rape and long hours	Trauma, respiratory conditions, HIV and sexually transmitted diseases, chemical poisoning, psychological impacts
Sex work	Bar and club work, prostitution	Dangerous environments, drugs, physical abuse, rape, log hours	Trauma, fatigue, HIV and sexually transmitted diseases, psychological impacts
"Informal work"	Scavenging, begging, hawking, drug selling and stealing	Unsanitary conditions especially in garbage heaps, exposure to violence and traffic accidents, legal sanction	Trauma, malnutrition, communicable diseases, psychological impacts

Mental Illness: Neurodevelopmental disabilities (mental disorder, cerebral palsy, Autism, ADHD, etc.) account for 15% of the population of children in India.

Jailing of mentally ill illegal and unconstitutional: The Supreme Court in *Sheela Barse* v. *Union of India*, (1993) 4 SCC 204: 1993 AIR SCW 2908, held that lodging mentally ill people in jail was illegal and unconstitutional and directed that admission of mentally ill persons to jails in West Bengal be stopped. It also said that the function of getting mentally ill persons examined and sent to places of safe custody shall be performed only by judicial Magistrate. Calcutta High Court was asked to appoint a committee comprising a mental health professional/psychiatrist, a Social Worker and a Law Person to evaluate the state of the existing mentally ill in jails. It further said that the recommendations of commission should be implemented by other States also.

Physical Disabilities: Refer Topic on "Disabled" for discussion.

NGO Health care services for Animals: Health Care services extend to four legged creatures and our feathered friends too. NGOs provide a wide range of care for animals which include:

Ambulance services for Animals in distress – Emergency ambulance services to animals in distress injured, disabled, diseased animals are provided care and protection as also in case of floods, droughts, famines, forest fires etc.

Birth Control and Immunization of Stray Dogs – At present stray dogs are indiscriminately killed to control their population and to minimize the incidence of rabies. Voluntary organisations do conduct sterilization programmes in limited numbers (zone/colony-wise) and immunization of stray dogs for community safety from stray dogs.

Shelter Houses for Looking after the Animals: NGO shelter houses receive and accommodate animals roaming around in the streets and elsewhere, wounded or diseased and extend facilities like health care, stall feed etc.

Relevant Laws which secure health and welfare of Indian workers:

An NGO concerned with health care services and health care and occupational diseases awareness campaigns will be emboldened with the following stock of medical aid and workers welfare laws which strive to protect and preserve the good health and well being of the employed Indian. While enforcement of welfare legislation remains a daunting task, awareness campaigns are a successful forte of NGOs working in Health care. Lawyers continue to be reluctant to take on compensation cases because workers cannot pay them if they lose. Matters are made worse by managers who drag their feet until workers' funds run out.

(i) Factories Act, 1948;

(ii) Mines Act, 1952;

(iii) Dock Workers (Safety, Health and Welfare) Act, 1986;

(iv) Plantation Labour Act, 1951;

(v) Explosives Act, 1884;

(vi) Petroleum Act, 1934;

(vii) Insecticide Act, 1968;
(viii) Indian Boilers Act, 1923;
(ix) Electricity Act, 2003;
(x) Dangerous Machines (Regulation) Act, 1983;
(xi) Indian Atomic Energy Act, 1962;
(xii) Radiological Protection Rules, 1971;
(xiii) Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989;
(xiv) Employees' Compensation Act, 1923;
(xv) Employees' State Insurance Act, 1923.

(i) Factories Act, 1948

The Factories Act has legal expectations of an employer *vis-a-vis* his employees and the factory premises, failing which the employer is bound to face penal consequences. Under the Act, an employer is obliged to ensure cleanliness of the premises; arrange for treatment and disposal of waste and effluent; maintain temperatures for reasonable comfort of workers; remove dust and fumes which may be injurious to workers; prevent overcrowding; provide adequate ventilation, sufficient lighting, clean drinking water, latrines and urinals. An Employer's list of Safety Do's and Don'ts include the following items of prescribed legal actions – to secure guarding all parts of dangerous machinery; to provide precautions for working on machinery; emergency devices for cutting off power; to maintain hoists and lifts; to maintain lifting machines, chains, ropes, and other lifting tackle in good condition; to ensure walking surfaces are of sound construction; to provide protective equipment; to provide measures to prevent fires. The factory occupier has an obligation to disclose information about the dangers, health hazards, and measures to protect workers from substances or materials in manufacture, transportation, storage to the workers, the chief factory inspector, and the local authority. The employer is required to maintain up-to-date health records of workers and conduct medical examinations.

(ii) Mines Act, 1952

Provides for a minimum age of employment which is 18 years, calls for one day of rest every week; delimits working hours; and prohibits underground work for women; directs provision of clean water and medical facilities.

(iii) Employees' Compensation Act, 1923

Compensation for occupational diseases and accidents is provided for in the Workmen's Compensation Act and Employees State Insurance Act. (Notes on compensation and alternative employment for disabled workers are provided under the topic "Disabled"). Though the legislations appear to empathise with a worker who is injured, disabled at work by providing compensation at specified rates depending on nature of injury and nature of employment, there is a resounding chorus that the process for receiving compensation is long drawn and discourages many an injured worker.

Select NGOs on Health Care Services

1. Hoina Leprosy Research Trust

Focus of activity: *Leprosy eradication and rehabilitation* - in tribal areas. Only reconstructive surgery hospital, home for physically disabled and mentally disabled children linked to community-based rehabilitation and vocational training; education and vocational training for children of leprosy patients.

Address: Post Bag 1, Muniguda, Rayagada District – 765020, Orissa.

Fax: 0891-567627

2. HEADS – Health Education Agriculture Development Society

Focus of activity: *Health and rehabilitation*: To provide health care facilities to families by training local personnel on sustainable basis; training of women on economical developmental activities and providing them loans; implementing Reproductive and Child Health programme.

Address: PO Muttala, Atmalur Mandal, Ananthapur District –

515751 Andhra Pradesh.

Phone: 08554-58243, 58277 Fax: 08554-58344

3. Bharath Charitable Cancer Hospital and Institute

Focus of activity: *Cancer*: Community awareness on early detection of cancer; help to cancer patients in treatment and post-treatment.

Address: 600/601 Irwin Road, Mysore – 570 001, Karnataka.

Phone: 0821-517130, 517574 Fax: 0821-513149

e-mail: bh1097@vsnl.net.in

4. Bombay Leprosy Project

Focus of activity: *Leprosy:* Urban leprosy control; operational quality research, training and development of innovative cost-effective strategies.

Address: Vidnyan Bhawan, 11 V. N. Purav Marg, Sion, Chunabhatti, Mumbai – 400022 Maharashtra.

Phone: 022-5226268, 5223040 Fax: 022-5296486

5. Khoj

Focus of activity: *Malnutrition*: Awareness, prevention and intervention in malnutrition cases among tribal people living in Melghat region, Amravati, Maharashtra.

Address: Gujari Bazar, Near Govind Lodge, Behind PO, Paratwada, Amaravathi District – 444805 Maharashtra.

Phone: 07223-20782 Fax: 07223-20750

6. All India Ophthalmological Society (established in 1930 and is a registered Society under the Society's Registration Act, 1860.)

Promotion of study and practice of ophthalmic sciences, research and man-power development with a view to render service to the community and to promote social contacts among ophthalmologists.

Address: 138, Ram Vihar, Vikas Marg Extension, Delhi – 110092.

7. **Indian Veterinary Association**

   Promote the advancement of veterinary science in all its aspects.

8. **Ramakrishna Mission Seva Pratishthan**

   Organisation to serve the sick and suffering humanity.

9. **Rotary International**

   Assists international health agencies and governments in eradicating polio.

10. **United Nations Population Fund (UNFPA)**

    Multilateral funding agency for population, development & health services.

11. **CASA**

    Non-profit organisation for counselling & allied services for AIDS.

(X) SUBSTANCE ABUSE



No drug, not even alcohol, causes the fundamental ills of society. If we're looking for the sources of our troubles, we shouldn't test people for drugs, we should test them for stupidity, ignorance, greed and love of power.

—P.J. O'Rourke

Nature of: Substance Abuse includes abuse of drugs like Heroin[1], Opium[2], Cannabis[3], Methylenedioxymethamphetamine[4] (MDMA), Methamphetamine Hydrochloride[5], Inhalants[6] and Depressants[7] and or alcohol. "'Abuse of drugs' means the use of controlled drugs solely for their stimulant, depressant or hallucinogenic effect upon the higher functions of the central nervous system and not as a therapeutic agent recommended by a practitioner in the course of medical treatment or in a program of research operated under the direction of a physician, or pharmacologist, physiologist, or chemist"[8]. "Alcohol abuser' means anyone who drinks to an extent or with a frequency which impairs or endangers his health, or his social and economic functioning, or the health and welfare of others[9].

Consequences[10] of abuse: All kinds of substance abuse are negative and damaging to an individual's well-being and health at the first instance and can cause death.

Handling the problem[11]: On a global scale, the prevention of substance abuse in society at large is sought to be achieved through two basic approaches:

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1. Also known white, smack, junk, powder, medicine or 'He' and is a powerful and very addictive drug that comes in granular, powder or solution form.
2. Opium is a powerful illegal drug made from poppy seeds. Originally, it was used as a painkiller. Raw opium is brown, rubber-like hard and strong in smell and is usually smoked.
3. Also known as marijuana, pot, grass, joint or 'ganja' it contains a chemical that affects one's mood and the way one sees and hears things.
4. Also known as Ecstasy, Pink, Pink Lady, Snow White, Playboy, Apple, XTC or 'Yaa Baa' it comes in a pill or capsule form which is often sold in discos and night venues. It causes permanent damage to the heart and liver.
5. Also known as 'Ice', glass crystal, quartz, ice cream, hirropon or shabu
6. Also known as glue-sniffing, solvent abuse, solvent inhalation, solvent sniffing. Some substances, such as glue and paint thinner, give off vapors and fumes. The sniffing of vapor is known as inhalant abuse.
7. These are drugs which help a person to calm down and sleep, *e.g.* Upjohn and Erimin.
8. State of New Hampshire's Statute for Public Safety and Welfare - Chapter 172: Study, Treatment and Care of Inebriates.
9. New Hampshire Statutes on Public Safety and Welfare - Chapter 172B Alcoholism and Alcohol Abuse.
10. Substance Abuse leads to aches and spasms, stomach cramps and convulsions, shaking and vomiting, running nose, watery eyes, loss of concentration, heart rate increases, poor balance and coordination, anxiety, depression, confusion and hallucinations-imagining objects, hearing sounds.
11. Extract From Ficci Sedf-Ilo-Norway Project on Mobilising Small Businesses to Prevent Substance Abuse.

(i) **Supply control measures** to keep drugs away from people, which include stringent laws against illicit trafficking, peddling and pushing of narcotic drugs and psychotropic substances, rules and regulations for such illicit drugs as are likely to produce dependence, if used indiscriminately, and administrative actions to restrict the availability and consumption of addictive substances;

(ii) **Demand reduction measures** to keep people away from drugs, which include creating awareness about the ill-effects of substance abuse and educating people to refrain from it, identifying addicts and treating them through a comprehensive programme of counselling, detoxification[1], aftercare, rehabilitation and reintegration of recovering addicts into the social mainstream, and for these purposes, interactions and linkages with various sectors of socio-economic development.

"I tried marijuana once. I did not inhale".

—William J. Clinton - Bill Clinton

Legal Aspects

Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985: India has committed[2] itself to international co-operation against drug trafficking and has adopted national laws, the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985[3], which prescribes severe penalties for possession, illicit cultivation, importation, exportation and trafficking of narcotic drugs and psychotropic substances.

The Act lays down heavy penalties against illicit trafficking, ranging from 10 to 20 years of imprisonment and fine extending upto Rs. 1-2 lakhs the imprisonment and fine can be extended (even a death sentence is permissible under specified circumstances) by the Court's discretion. However, the punishment for the possession of a prohibited drug for personal consumption is much lesser, with a definite scheme of depenalisation, deinstitutionalisation and diversion of addicts so as to ensure appropriate care, treatment and rehabilitation. The Law provides that:

- An addict charged for the consumption of a drug or possession thereof in small quantity for his own use can be given immunity from prosecution once in his life-time if he voluntarily seeks to undergo medical treatment for deaddiction from a recognised institution.
- An addict so detained and willing to undergo treatment can be released on probation on entering into a bond to submit a report on having successfully undergone medical treatment and not to commit any offence under the law for a period upto 3 years.

1. Planned withdrawal of an individual from a state of acute or chronic alcohol intoxication, under qualified supervision. This withdrawal may be aided with or without the use of medication. The process involves monitoring and management of the physical and psychological effects of withdrawal for safe reversal of the patient to normal body and mind functions.
2. India is a signatory to the UN Conventions on narcotic drugs and psychotropic substances.
3. Under section 4 of the NDPS Act, the Narcotics Control Bureau (NCB) has been constituted by the Central Government to function as the apex enforcement and co-ordination authority at the national and international level.

- Central and State Governments are required to establish at their discretion Centers for the identification, treatment, education, aftercare, rehabilitation and social integration of addicts, and for supply of drugs to registered addicts and to others for medical reasons.

Drugs & Cosmetics Act, 1940 and the Drugs and Cosmetics Rules, 1945 – Prescribe the standards and quality, and regulate the import, manufacture, sale and distribution of all drugs including ayurvedic drugs in India.

Confidentiality of Client Records: An alcohol or drug abuse treatment facility is *per se* bound by terms of confidentiality *vis-a-vis* the Reports or Records or the information and details pertaining to the Records of the identity, diagnosis, prognosis, or treatment of any patient. Please note that the aforesaid documents and their contents cannot be used for purposes other than rehabilitation, research, statistical or medical purpose, except upon the written consent of the person examined or treated or when called for by authorities authorized in this behalf by statute (and in a court of law). Thus a patient in an assisted alcohol or drug abuse program is not made more vulnerable by reason of the availability of his or her patient record than an individual who has an alcohol or drug problem and who does not seek treatment.

Qualified counsellors: Evaluation (and or treatment) of a person is required to be done by a qualified health worker and substance abuse counsellor for the purpose of recommending an appropriate treatment plan and thereafter during the said treatment.

Relevant laws relating to Substance Abuse

Prevention of Illicit Traffic In Narcotic Drugs And Psychotropic Substances Act, 1988

Unlawful Activities (Prevention) Act, 1967

The Narcotic Drugs And Psychotropic Substances (Execution of Bond by Convicts or Addicts) Rules, 1985

The Cigarettes (Regulations of Production, Supply and Distribution), Act, 1975

The Drug and Cosmetics Act, 1940

The Inflammable Substances Act, 1952

The Poisons Act, 1919.

Select NGOs on Substance Abuse

1. El Shaddai Resource Centre

Focus of activity: Socio-economic and moral upliftment of the people of Manipur and the North-East India through health care, education related to drug abuse/AIDS, small group mobilisation on substance abuse awareness, church/community leadership training, programmes on environmental and family life issues.

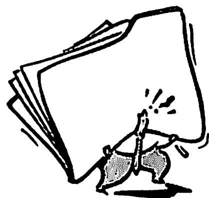
Address: PO Box 73, Chingmeirong East, Imphal – 795010 Manipur.

Phone: 0385-227138 Fax: 0385-320175

2. Muktangan

Focus of activity: Involved in de-addiction, rehabilitation for drug addicts and alcoholics.

(XI) UNORGANISED LABOUR



Going by the statute books alone, workers in India appear well armoured and protected with well defined rights. This in an idealistic scenario ensures that their Fundamental Rights[1] and Directive Principles of State Policy[2] provided in our Constitution are upheld. However, in the world's largest democracy a class of workers called "Unorganised Labour" would beg to differ on such utopian concepts. The very nature of their work disqualifies them for several goodies in the form of rights and reliefs provided by statute.

The term "Unorganised labour" applies to categories of workers who have not been able to organise themselves in their common categories of work on account of restrictive factors like casual nature of work, illiteracy, small and scattered size of establishment.

The workers of this category include:

(a) Small farmers;
(b) Workers in animal husbandry;
(c) Workers in beedi rolling;
(d) Workers in labelling and packing;
(e) Building and construction workers;
(f) Labour engaged in collection of raw hides and skin;
(g) Handlooms weavers, zari workers;
(h) Papad makers, processing of fish, salt workers, cobblers, lady tailors, carpenters, workers in brick kilns and stone quarries, migrant workers, contract and casual workers, toddy tappers, tendu leaf collectors, scavengers, carriers of head loads, drivers of animal driven vehicles, loaders, mid-wives, domestic workers, newspaper vendors[3], vegetable and fruit vendors[4].

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1. Right to Equality (Articles 14-18); Right to Freedom (Articles 19-22); and Right against Exploitation (Articles 23-24).
2. That the State should aim to secure a Social Order for the promotion of welfare of people (Article 28); equal pay and saying no to child labour (Article 39); Equal Justice and Free Legal Aid (Article 39A); Right to Work; to Education and to public assistance in cases of unemployment, old age, sickness, disablement and undeserved want (Article 41); Provision of Just and Humane Conditions of Work and Maternity Relief (Article 43); Living Wage for workers (Article 43); Participation of Workers in the Management of Industry (Article 43A).
3. *Draft national policy to regulate activities of street vendors (hawkers)*: Has been drawn up by a task force of the Central Government to provide vendors with a legitimate status and certain basic facilities. Recommendations include – (a) amendments to Indian Penal Code and Police Act to empower civic authorities to evict hawkers and confiscate their goods; (b) town authorities to provide photo-identity cards to hawkers to help eliminate the harassment, eviction and hafta, or extortion; (c) facilities to include, access to public toilets, easy credit, insurance and electricity and water connections, available at a monthly charge of Rs. 20 per vendor, space for hawkers. (Source: The Indian Express, October 3, 2002)
4. The task force of the Central Government which has drafted the Policy on Hawkers has estimated that there are around one crore street vendors nation-wide and their primary sins include blocking streets and littering cities.

The Second National Labour Commission has recognised the certain rights of labourers which belong to them under any labour policy or labour laws:

(a) Right to work of one's choice;
(b) Right against discrimination;
(c) Prohibition of child labour;
(d) Just and humane conditions of work;
(e) Right to social security;
(f) Protection of wages including right to guaranteed wages;
(g) Right to redress at of grievances;
(h) Right to organise and form trade unions;
(i) Right to collective bargaining; and
(j) Right to participation in management.

Legal Aspect

Unorganised Labour is not protected adequately[1] by statute on account of its small and dispersed nature. There is no formal relationship of employer – employee and have little or no bargaining power; since often the relationship is ambiguous and indefinite, this exposes them to exploitation.

The following Acts are applicable to Unorganised Labour:

Payment of Wages Act, 1936;
Employees State Insurance Act, 1948;
Plantation Labour, Act, 1951;
Maternity Benefit Act, 1961;
Payment of Gratuity Act, 1972;
Personal Injuries (Compensation Insurance) Act, 1963;
Beedi & Cigar Workers (Conditions of Employment) Act, 1966;
Beedi Workers Welfare Fund Act, 1976;
Inter–State Migrant Workmen (Regulation & Conditions of Service) Act, 1979.

Select NGOs on Unorganised Labour

Bullock-cart Workers Development Association

Focus of activity: Working with the families – women and children - of the bullock cart workers; vocational training for children along with programme for health and animal welfare.

Address: PB No. 93, 454 East Pondy Road, Villupuram – 605602 Tamil Nadu.

Phone: 04146-23121; 23683 Fax: 04146-23121

1. There are about 50 Central Laws and another 200 State Laws dealing with employees/workers in the organised sector.

Sevaniketan

Focus of activity: To establish social justice, protection of the underprivileged, encouragement of rural industry and industrial training programmes protection of women and children, tailoring and garment-making unit, a typewriting and shorthand centre, toy-making unit, training in plumbing and sanitation work, carpentry unit, and training in automobile engineering; ayurvedic and natural health-care facilities on a charity basis.

Address: Konniyoor Samad, Konniyoor, Poovachal, Trivandrum - 695575 Kerala.

Tel: 0471-290052

Website: http://www.differentindia.org/sevaniketan.html

Agape Bible Fellowship

Organisation helping street kids, ragpickers, stone cutters in Bangalore.

(XII) WOMEN



The hand that rocks the cradle rules the world

Women have equal rights as men to life, liberty, equality and dignity which are guaranteed by the Constitution, extended in International Covenants and enforceable by courts in India. This basic concept of equality has many shades of grey, as women all over India, both social and urban, literate and illiterate, whether a mother, daughter, wife or daughter-in-law are keenly aware that though the Indian male worships them as godesses in some instances, yet in other circumstances she faces physical and mental threat to her well being by the same male members of the society.

Numerous NGOs have taken up womens' issues ranging from prevention of sexual harassment or exploitation, dowry deaths, female infanticide, education of the girl child, income generation for and by the women and by far one can practically conclude that womens' issues are the most widely debated and worked upon areas of NGO activity in India.

Legal Aspects

Dowry: NGOs working for womens' welfare are well versed with the provisions of the Dowry Prohibition Act, 1961 as routine cases of bride burning and attempts to injure, acts of cruelty, harassment by the husband and or his relatives on the hapless woman/wife are unfortunately a matter of routine in our country. Section 2 of the said Act provides that the term 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly—

1. by one party to a marriage to the other party to the marriage: or
2. by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before or any time after the marriage, in connection with the marriage of the said parties, but does not include dower or mehr in case of persons to whom the Muslim Personal Law applies.

Section 304B[1] specifically deals with the offence of dowry death stating that 'whoever commits a dowry death shall be punished with imprisonment for a term which shall not be less than 7 years but which may extend to imprisonment for life.' The demand for dowry is itself punishable if the other ingredients of section 304B are established.

1. When the death of a woman is caused by any burns or bodily injury, or occurs under unusual circumstances, and the aforesaid two facts spring within 7 years of the girl's marriage, and soon before her death, she was subjected to cruelty or harassment by her husband or her relative, and this is in connection with the demand for dowry. If these conditions exist, it would constitute a dowry death, and the husband and/or his relatives shall be deemed to have caused her death.

Rape, Sexual Harassment/Exploitation: The Indian Penal Code, (45 of 1860) has elaborately provided for the offence of rape[1] committed on women and an offender can face an imprisonment of upto ten years for custodial rape, gang rape, rape of pregnant women and minor girls under the age of 12 and seven years in other cases.

Sexual Harassment at workplace (Guidelines): The Supreme Court's guidelines describe physical contact or advances; demand or request for sexual favours; sexually coloured remarks and showing pornography as offensive conduct and directs that:

(a) It shall be the duty of the employer or other responsible persons in the workplace or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedure for the resolution, settlement or prosecution of acts of sexual harassment.

(b) The employer should initiate action in accordance with the law by making a complaint with the appropriate authority. Victims should have an option to seek their own transfer or that of the perpetrator.

(c) A complaint mechanism should be created in the organisation. This complaint mechanism should ensure time-bound treatment of complaints. The complaints committee should be headed by a woman and not less than half of its members should be women. In order to prevent the possibility of undue pressure or influence from senior levels, a third party, especially a NGO familiar with sexual harassment, should be involved in the complaints committee.

(d) The committee must submit an annual report to the government. Employees must be allowed to raise the issue of sexual harassment at various fora.

(e) The guidelines also provide for the initiation of criminal proceedings where sexual harassment is proved beyond doubt.

Women who either draw a regular salary, receive an honorarium, or work in a voluntary capacity - in the Government; private sector or unorganised sector come under the purview of these guidelines.

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1. A man has committed 'rape' when he has had sexual intercourse with a woman and this act is:

   (a) Against her will.

   (b) With her consent when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or hurt.

   (c) With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

   (d) With her consent, when at the time of giving such a consent, by reason of unsoundness of mind or intoxication on the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature of the consequences of that of which she gives consent.

   (e) With or without her consent, when she is under 16 years of age.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

This Act provides for the protection against sexual harassment of women at their workplace and for prevention and redressal of complaints of sexual harassment. The Act defines[1] sexual harassment as:

> "sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:—
>
> (i) physical contact and advances; or
>
> (ii) a demand or request for sexual favours; or
>
> (iii) making sexually coloured remarks; or
>
> (iv) showing pornography; or
>
> (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature."

This Act covers both Private or Development Sectors including hospital, dwelling place or house and also includes unorganised sectors. And it provides for Constitution of Internal Complaints Committees (ICCs) and Local Complaints Committees (LCCs).

After the enactment of this Act the NGOs dealing with women related issues are happy it became easy and better for them to deal with the women issues in legal scale.

Rape victim's harassment during trial: In a PIL filed by an NGO called Sakshi (*Sakshi* v. *Union of India*, AIR 2004 SC 3566), the Supreme Court was called upon to alter the definition of "sexual intercourse" under section 375 of the Indian Penal Code to include all forms of penetration such as penile/vaginal penetration, penile/oral penetration, penile/anal penetration, finger/vaginal and finger/anal penetration and object/vaginal penetration. The Court in view of the express legal provision declined to do that.

However, it did take note of the fact highlighted in the petition that deposition of victim of rape can be very embarrassing. The Court observed that rules of procedure are meant to advance and not to obstruct justice. The Court, therefore, extended the application of section 372(2), Cr. P.C. to the enquiry and trial of offences under section 354 and section 377 of the IPC. While holding the trial, the Court ruled, a screen or some other such arrangement be made that the victim/witness is not compelled to see the face or body of the accused. Furthermore, the questions to be put on behalf of the accused to the victim during cross-examination are now to be in writing and given to the presiding officer of the court who may put them to the victim in a language that is clear and not embarrassing. Sufficient breaks are to be allowed to the victim during the testimony and cross-examination and the trial is to be conducted *in camera* and so far as possible before lady judges.

Women suspects assaulted in custody: In *Sheela Barse* v. *State of Maharashtra*, AIR 1983 SC 378: 1983 Cr LJ 642: (1983) 2 SCC 96, a letter written by a journalist

1. Section 2(n) of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

to the Supreme Court regarding the torture and assault on women suspects in the police lock-ups treated as a writ petition. The Court issued directions and guidelines to be followed with respect to women prisoners in police lock-ups. Most of the suggestions made by the Court were readily agreed to by the government.

It was directed that female suspects should not be kept in a police lock-up in which male suspects are detained; the State Board of Legal Aid and Advice was made to call for periodic reports from the District Legal Aid Committees with a view to ensuring that the directions given by Supreme Court are being properly carried out. Directions also issued to the Inspector-General of Prisons and the State Board of Legal Aid and Advice for setting up a machinery for providing legal assistance to prisoners in jails, whether they are convicted prisoners or undertrials.

Women with Child

Miscarriage/Termination of pregnancy: In terms of sections 313 and 314 of the Indian Penal Code, (45 of 1860) the acts of a person intended to cause miscarriage of a pregnant woman is an offence. Further, termination of pregnancy without the consent of the pregnant woman is prohibited under the Medical Termination of Pregnancy Act, 1971. NGO volunteers are informed that in the event of a request by a woman to terminate her pregnancy, certain rights are available to her under the Act. Whenever a pregnancy has been terminated, the medical practitioner should record the prescribed information. It is necessary to keep the name and address of the woman, who has requested or obtained a termination of pregnancy confidential. Also, if a pregnancy is terminated by someone who is not a registered medical practitioner, this would be an offence punishable under the Indian Penal Code.

Maternity Benefits: Maternity Benefit Act[1] – Please refer Chapter 11 "Indian Laws and NGOs" for a detailed discussion on the legal rights and maternity benefits of women employees before and after child birth entitling every woman to an amount payable to her at the rate of the average daily wage for the period of her actual absence on account of child birth (and sickness, complications arising on account her delicate condition)

Cruelty

Under section 498A of the Indian Penal Code, the husband (or his relatives) can be punished for a term which can extend upto 3 years and shall also be liable to pay fine, for cruelty towards his wife.

1. The Act extends to every factory, mine or plantation (including those belonging to Government), an establishment engaged in the exhibition of equestrian, acrobatic and other performances, irrespective of the number of employees, and to every shop or establishment wherein 10 or more persons are employed or were employed on any day of the preceding 12 months. The Act does not apply to any establishment to which the provisions of the Employees' State Insurance Act are applicable for the time being. But, where the factory/establishment is governed under the Employees' State Insurance Act, and the woman employee is not qualified to claim maternity benefit under section 50 of that Act, because her wages exceed Rs. 3,000 p.m. or for any other reason, then such woman employee is entitled to claim maternity benefit under this Act till she becomes qualified to claim maternity benefit under the E.S.I. Act.

Being cruel: The law recognises the following acts as cruelty:

(a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or:

(b) Harassment of the woman - where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security on the account of failure by her or any person related to her to meet such demand.

Cruelty for the purposes of this law is not restricted only to physical cruelty but also includes mental cruelty.

Section 498A—This section though primarily introduced to protect and prevent victimisation of women, on occasions, several women to harass husbands and their relatives by misuse of the provision.

Child Prostitutes and the children of the prostitutes: In *Gaurav Jain* v. *Union of India*, AIR 1997 SC 3021: (1997) 8 SCC 114: 1997 AIR SCW 3055, wherein the plight of the child prostitutes and the children of the prostitutes was brought to the notice of the apex Court, the Court directed that the child prostitutes be rescued from the red-light areas and should be shifted into the juvenile homes. The officers-in-charge of the juvenile homes, the welfare officers and the probation officers should coordinate the operation and enforce it successfully. They should be made responsible for the protection of the child prostitutes or the neglected juveniles kept in the juvenile homes for psychological treatment in the first instance relieving them from the trauma to which they were subjected to while in the brothels and red-light areas. Special police authorities should be established to coordinate with the social welfare officers of the State Govt. and public-spirited persons, NGOs locally available, and see that the juvenile homes are entrusted to efficient and effective management, the child prostitutes or neglected juveniles are properly protected and psychologically treated, education imparted and rehabilitation succeeded. Furthermore, the Court directed that the rescue and rehabilitation of the child prostitutes and children should be kept under the Nodal Department, namely, Department of Women and Child Development under the Ministry of Welfare and Human Resource, Government of India.

The Court also observed that the customary initiation of women in the practice of Devadasi, Jogins and Venkatasins is prevalent in Andhra Pradesh, Karnataka and Maharashtra areas; in particular the practice of prostitution is notorious. It is an affront to human dignity and self-respect but the pursuit of customary beliefs traps the fair sex into this glorified self-sacrifice and ultimately leads to prostitution service in the temples and charitable institutions, which is a crime against humanity, violation of human rights and obnoxious to the Constitution and the Human Rights Act. Therefore, the Court opined that counselling, cajoling and coercion are necessary to effectively enforce the provisions of ITP Act and JJ Act.

Speaking on the scope of PIL the Court said that proceedings in PIL were not adversarial but one of collaboration and cooperation between the State and

the Court, and invoking Article 142 Court could issue directions to do complete justice.

Mentally ill women and children: In *Sheela Barse* v. *Union of India*, (1995) 5 SCC 654, the Supreme Court took note of the deplorable conditions of mentally ill and insane women and children kept in jails and issued directions entrusting High Courts the task of monitoring the implementation by issuing all necessary and appropriate orders as may be warranted, from time to time, for proper implementation of the apex Court's orders.

Laws relating to Women's issues

The Protection of Civil Rights Act, 1955

The Protection of Human Rights Act, 1993

The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989

Dowry Prohibition Act, 1961

Dowry Prohibition Act, Rules, 1985

Family Courts Act, 1984

Hindu Minority and Guardianship Act, 1956

Bonded Labour System (Abolition) Act, 1976

Building and Other Construction Workers' Welfare Cess Act, 1996

Child Labour (Prohibition and Regulation) Act, 1986

Industrial Employment (Standing Orders) Act, 1946

Industrial Disputes Act, 1947

Industrial Disputes (Central) Rules, 1957

Industrial Tribunal (Central Procedure) Rules, 1954

Minimum Wages Act, 1948

Payment of Bonus Act, 1965

Payment of Gratuity Act, 1972

Payment of Wages Act, 1936

Public Provident Fund Act, 1968

Employee's Compensation Act, 1923

Immoral Traffic (Prevention) Act, 1956

Select NGOs on Women's Issues

(1) National Commission for Women

Focus of activity: Organisation for helping and protecting women in India. Help for dowry issues, female foeticide, child marriage, sexual harassment, and legal advice.

Address: 4, Deen Dayal Upadhaya Marg, New Delhi – 110002.

(2) Care

Began work in India in 1950, pursuant to INDO-CARE agreement with Government of India.

Focus of activity: Social Development – To promote small economic activity development; health and nutrition; urban development; tribal empowerment; agriculture and natural resources; girl's education; emergency response; large-scale rural savings and credit projects; encourages access to financial services through self-managed and controlled self-help groups.

Address: 27, Hauz Khas Village, New Delhi – 110016.

Phone: 91-11-26564059, 26564062 Fax: 91-11-26564081

E-mail: cbox@careindia.org

(3) Jagori

(Commenced work in 1984)

Focus of activity: ***Women's resource centre***: production of multi-media information material; library; training on issues of patriarchy, violence, sexuality, health and development; advocacy and campaigning on all issues related to women, specifically violence against women.

Address: C-54, Top Floor, South Ext. II, New Delhi – 110049.

Phone: +91-11-625 7015 Fax: +91-11-625 3629

E-mail: jagori@del3.vsnl.net.in

(4) Self-Employed Women's Association (SEWA)

Address: Sewa Reception Centre, Opp. Victoria Garden, Bhadra, Ahmedabad, Gujarat – 380001.

Phone: 079–5506477, 5506444 Fax: 079–5506446

E-mail: sewa.mahila@axcess.net.in

(5) Kali for Women

Focus of activity: Involved in increasing the knowledge on women; provides a forum for women writers – creative and academic.

Address: B-1/8, Hauz Khas, 1st Floor New Delhi – 110016.

Phone: 26852530, 26864497 Fax: 011-26866720

(6) Bunyad

Focus of activity: To provide professional training in zari to facilitate income generation; painting and embroidery to women of deprived classes; financial assistance to needy women; co-ordinate with funding agencies for financial assistance to minority groups.

Address: Mayura Lok Complex, B-61, 1st Floor, Patna – 800001, Bihar.

Phone: 0612-235474 Fax: 0612-225192

(7) Centre for Women's Development Studies

Focus of activity: Research centre comprised of a group of professionals working for the realization of women's equality and development in all spheres of life. The centre maintains a specialized library with a collection on women and development in India, open to students, research scholars, gender consultants, policy makers, journalists.

Address: 25 Bhai Vir Singh Marg, Gole Market, New Delhi – 110001.

Phone: 2334 5530 Fax: 00-91-11-23346044

E-mail: cwdslib@alpha.nic.in or cwds@sscwds.ren.nic.in

(8) YWCA of India

Focus of activity: Affiliated to the World YWCA and works for women's empowerment through leadership training for women, advocacy work on all women's issues, and community development work. The YWCA also runs 40 women's residences across the country providing housing for working women as well as emergency shelter for women.

Address: 10, Sansad Marg, New Delhi – 110001.

(9) All India Coordinating Forum of the Adivasi Indigenous Peoples (AICAIP)

Focus of activity: Forum for Adivasi/indigenous people's movements all over India. One of the five working groups AICAIP has established is focused on Adivasi Women Issues.

Address: K-14 (First Floor), Green Park Ext., New Delhi – 110016.

Phone: 26163830 Fax: 00-91-11-26198042

E-mail: admin@tom.unv.ernet.in

(10) Center for Health Education, Training and Nutrition Awareness (CHETNA)

Focus of activity: Empowerment of disadvantaged women and children to enable them to gain control over their own, their families' and their communities' health. Provides training for supervisors, trainers, program managers and practitioners of NGO. CHETNA's main efforts are aimed at documenting the lives of women and children in India and health issues.

Address: Lilavatiben Lalbhai's Bungalow, Civil Camp Road, Shahibaug – 380 004 Ahmedabad, Gujarat.

Phone: 2868856 Fax: 00-91-79-2866513

E-mail: chetna@adinet.ernet.in



11

INDIAN LAWS AND NGOs

In Chapter 9 you were browsing through the various faces and identities an NGO can choose to don when forming its noble objectives to make a contribution to mankind and all creatures, great and small. A select list of Indian statutes noted below in this Chapter, provides a general supplement to the specific legal aspects of working NGOs and regulate the scope and extent of NGO contribution in terms of awareness promotion, providing services, supplies, activating the Government and international NGO community and other activities.

(i) Advocates Act, 1961
(ii) The Juvenile Justice (Care and Protection of Children) Act, 2000
(iii) Consumer Protection Act, 1986
(iv) Maternity Benefits Act, 1961
(v) Prevention of Food Adulteration Act, 1954
(vi) Prisoners Act, 1900
(vii) Protection of Human Rights Act, 1993
(viii) The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989
(ix) Weekly Holidays Act, 1942
(x) Wild Birds and Animals Protection Act, 1912

Advocates Act, 1961

Specific provisions of the Advocates Act, 1961 convey in a clear and comprehensive manner the spirit to inculcate, promote and regulate voluntary legal activity by Indian legal practitioners[1]. In fact State Bar Councils are bound to organize legal aid[2] for the poor, conduct seminars and organize talks by

1. Section 2(i) of the Advocates Act, 1961, "Legal practitioner" means an advocate (or *vakil*) of any High Court, a pleader, *mukhtar* or revenue agent.
2. Section 6. *Functions of State Bar Councils*—(1) The functions of a State Bar Council shall be—

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(ee) to conduct seminars and organise talks on legal topics by eminent jurists and publish journals and papers of legal interest.

(eee) to organise legal aid to the poor in the prescribed manner.

(2) A State Bar Council may constitute one or more funds in the prescribed manner for the purpose of:

a. Giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates.
b. Giving legal aid or advice in accordance with the rules made in this behalf.
c. Establishing law libraries.

(3) A State Bar Council may receive any grants, donations, gifts or benefactions for all or any of the purposes specified in sub-section (2) which shall be credited to the appropriate fund or funds constituted under that sub-section.

eminent jurists for promoting legal awareness, set up funds for providing financial assistance to organise welfare scheme for the indigent, disabled or other advocates, establish law libraries. Further it is the duty of the Bar Council of India[1] to safeguard the rights, privileges and interest of advocates and to promote and support legal education and lay down and regulate standards of legal education across Universities in India, law reform and provide legal aid for the poor. Section 9A[2] expressly provides for the constitution of legal aid committees by the Bar Councils. In terms of section 48, the cloak of legal indemnity is provided for all Bar Councils, committees of the Council and members for any act done in good faith in pursuance of the purposes of the Advocates Act, 1961 and Rules, and no suit or legal proceeding can lie against the aforesaid persons.

Prohibition to divulge information acquired in course of one's profession: The code of privacy is required to be strictly observed by Advocates working with NGOs. Advocates providing charitable legal aid or professional legal services, cannot abuse or take advantage of the confidence reposed in them by their hapless clients.[3] Section 126 of the Indian Evidence Act, 1872 expressly bars an advocate from disclosing any communication made to him in the course and for the purpose of his employment as an advocate except with the consent of the client. This prohibition against disclosure extends to the contents of any document pertaining to his professional employment or advice given and an advocate's clerks and servants are also under the same obligation.[4] The obligation continues even after his employment has ceased.

The Juvenile Justice (Care and Protection of Children) Act, 2000

This Act provides for well-being of juveniles and children who are below 18 years of age. It also deals with the juveniles and children who are in conflict with law. It also deals with need of care and protection of juveniles, proper care and treatment for their development needs, child-friendly approach. The Act makes the provisions for constitution of Juvenile Justice Board (JJB) for any district in India empowering those to deal exclusively with all proceedings under the Act. Including the juveniles conflict with law. The High Court and Sessions Court in every State have power to deal with the issues relating to juveniles, and juveniles conflicting with law when the appeal and revision come to them.

The NGOs and other voluntary organisations are empowered by the State Governments under the Act, to establish the observation homes in every district in India in group of districts for the temporary reception of any juvenile in conflict with law during pendency of any inquiry upon them.

1. Refer section 7 of the Advocates Act, 1961.
2. Section 9A *Legal Aid Committees*—(1) A Bar Council may constitute one or more legal aid committees each of which shall consist of such number of members, not exceeding nine but not less than five, as may be prescribed.

   (2) The qualifications, the method of selection and the term of office of the members of a legal aid committee shall be such as may be prescribed.
3. In terms of rule 24, of the Bar Council of India Rules.
4. Section 127 of the Indian Evidence Act, 1872.

The Act provides for special homes to be established by the State Governments by itself or by agreement with NGOs or any other voluntary organisations in every district in India or in group of districts for the reception and rehabilitation of juvenile in conflict with law.

The Competent Authority under the Act makes Rules in respect of juveniles and children.

(1) the term of office of the members of the Board and the manner in which such member may resign under sub-section (4) of section 4;

(2) the time of the meetings of the Board and the rules of procedure in regard to the transaction of business at its meeting under sub-section (1) of section 5;

(3) the management of observation homes including the standards and various types of services to be provided by them and the circumstances in which and the manner in which, the certification of the observation home may be granted or withdrawn and such other matters as are referred to in section 8;

(4) the management of special homes including the standards and various types of services to be provided by them and the circumstances in which and the manner in which, the certification of the special home may be granted or withdrawn and such other matters as are referred to in section 9;

(5) persons by whom any juvenile in conflict with law may be produced before the Board and the manner of sending such juvenile, to an observation home under sub-section (2) of section 10;

(6) matters relating to removal of disqualifications attaching to conviction of a juvenile under section 19;

(7) the qualifications of the Chairperson and members, and the tenure for which they may be appointed under sub-section (3) of section 29;

(8) the time of the meetings of the Committee and the rules of procedure in regard to the transaction of business at its meeting under sub-section (1) of section 30;

(9) the manner of making the report to the police and to the Committee and the manner of sending and entrusting the child to children's home pending the inquiry under sub-section (2) of section 32;

(10) the management of children's homes including the standards and nature of services to be provided by them, and the manner in which certification of a children's home or recognition to a voluntary organisation may be granted or withdrawn under sub-section (2) [and the manner of registration of institutions under sub-section (3)] of section 34;

(11) appointment of inspection committees for children's homes, their tenure and purposes for which inspection committees may be appointed and such other matters as are referred to in section 35;

(12) facilities to be provided by the shelter homes under sub-section (3) of section 37;

[1][(13) rehabilitation mechanism to be resorted to in adoption under sub-section (2), notification of guidelines under sub-section (3) and the manner of recognition of specialised adoption agencies under sub-section (4) of section 41;]

(14) for carrying out the scheme of foster care programme of children under sub-section (3) of section 42;

(15) for carrying out various schemes of sponsorship of children under sub-section (2) of section 43;

(16) matters relating to after-care organisation under section 44;

(17) for ensuring effective linkages between various agencies for facilitating rehabilitation and social integration of the child under section 45;

(18) the purposes and the manner in which the Fund shall be administered under sub-section (3) of section 61;

(19) any other matter which is required to be, or may be, prescribed.

Offences and Penalties under Juvenile Justice (Care and Protection of Children) Act, 2000

Nature of Offences	Who is Offenders	Punishment under Relevant Sections
1. Publication of name, etc., of juvenile in conflict with law or child in need of care and protection.	Person who reports in newspapers and, magazines, news-sheet or visual media etc.	Penalty upto Rs. 25,000 under section 21.
2. Cruelty to juvenile or child in any form.	Person who is in actual control or charge of a juvenile or child	Imprisonment upto 6 months or fine or both under section 23.
3. Employment of juvenile or child for begging.	Person who engages.	Imprisonment upto 3 years and fine. And if the person who is in actual control or charge of juvenile or child, imprisonment upto 1 year under section 24.
4. Giving intoxication of Liquor or narcotic drug or psychotrophic substances to juvenile or child.	Person who gives or administers liquor or narcotic drugs.	Imprisonment upto 3 years and fine under section 25.
5. Exploitation of juvenile or child-employee.	Person who exploits.	Imprisonment upto 3 years and fine under section 26.

1. Ins. by Act 33 of 2006, sec. 26 (w.e.f. 22-8-2006).

Consumer Protection Act, 1986

The Consumer Protection Act, 1986 protects consumers from exploitation and gives them legal redressal against adulterated and substandard goods and deficient services. A consumer who is a voluntary consumer association registered under the Companies Act, 1956 or the Central Government or any State Government or one or more consumers where there are numerous consumers can file a complaint for defect in goods and services under this Act. The services which come under the purview of the Act include banking, financing, insurance, transport, housing construction, entertainment and others which are availed by consumers in India.

The Forums for legal action under the Act are three-tired *viz.*, the District Consumer Disputes Redressal Forums[1], State Consumer Disputes Redressal Commission[2] and the National Consumer Disputes Redressal Commission[3]. Any person who has bought goods for a consideration and finds any defect in the quality, quantity, potency, purity or standard of the goods or has hired or availed any service for consideration and finds any fault, imperfection, shortcoming, or inadequacy in the quality, nature and manner of performance in relation to the service can approach the relevant forum. The Act does not protect consumers who have bought goods for a commercial purpose or for resale.

The reliefs which follow from a successful legal action can include any of the following:

Goods

(a) Removal of defects from the goods;

(b) Replacement of goods with new goods of similar description;

(c) Return of the price of the goods or the charges for the services rendered;

(d) Payment of compensation for any loss or injury suffered by the Consumer.

Services

(a) Removal of deficiency in service;

(b) Discontinuance of the unfair or restrictive trade practice;

(c) Undertake not to offer hazardous goods for sale;

(d) Withdrawal of hazardous goods for sale;

(e) Provide adequate costs to the parties.

Filing A Consumer Complaint: While drafting a consumer complaint, the following details are required to be provided in the proposed (a) The allegation

1. Jurisdiction to entertain complaints where the value of goods or services and the compensation if any, claimed does not exceed ₹ 5,00,000.
2. Jurisdiction – Value of goods or services and the compensation if any, claimed exceeds ₹ 5,00,000 but does not exceed ₹ 20,00,000.
3. Jurisdiction – value of the goods or services and compensation if any, claimed exceeds ₹ 20,00,000.

of the complainant, (b) Name, description and address of the opposite party, (c) Name, description and address of the complainant (d) Relief asked for by the complainant. Attaching relevant documents such as copy of the invoice, receipt, warranty card, written correspondences as annexures to the Consumer Complaint is of vital importance and can make or break a genuine complaint. To encourage, facilitate and expedite the social intent of this Act, no court fee is required to be filed with a consumer complaint and procedure for filing and relevant court processes are less cumbersome and less intricate than the ordinary courts of law. Thus a complaint can be sent by registered post to be filed before the Consumer Redressal Forum.

Medical Negligence: The term assumes legal significance when a surgeon or other professionals fail to take 'reasonable care' in carrying out his duties[1]. A successful action for medical negligence rests on certain facts to be proved by the complainant i.e. the identity of the negligent doctor in question and his specific medical care of the complainant, cause and effect sequence of negligence and resulting harm.

Damages may be 'General' where the negligence has occasioned and resulted in injury, pain and suffering. 'Special Damages' arise where it is concluded that there is a loss of earnings, loss of marriage prospects, opportunities for gainful employment. Private nursing homes and hospitals are liable for the negligence of their employees, and in this regard, it will bode well for NGOs working in the health care services to ensure that the hospital, dispensary (as also their doctors and medical staff) are insured against medical negligence (Also refer notes on topic "Health").

The Maternity Benefit Act, 1961

The Maternity Benefit Act, aims to regulate employment of women employees in establishments, before and after child birth and to provide for maternity and other benefits. Maternity Benefits prescribed under the Act can be availed by women who work in any factory, mine, plantation, establishment engaged in the exhibition of equestrian, acrobatic and other performances and shops[2].

The Act entitles every woman to receive and obliges every employer to pay and be liable for non-payment of maternity benefit. This amount is payable to her at the rate of the average daily wage for the period of her actual absence. The Act empowers a woman employee in a relevant context with rights to make a complaint to the Inspector appointed under the Act and claim the amount of maternity benefit improperly withheld by the employer and to appeal against an order of the employer depriving her of the maternity benefit or medical bonus or dismissing or discharging her from service, to the competent authority.

The maximum period for which any woman shall be entitled to maternity benefit shall be 12 weeks in all (inclusive of leave before and after childbirth).

1. Some examples of negligence are when a doctor uses non-sterilised instruments, injures an organ while performing an operation on another part of the body, negligent post operative care, misdiagnosis.
2. However, the Act does not apply to an establishment where the Employees' State Insurance Act is applicable.

However the eligibility condition for availing maternity benefit includes that the woman is of course – pregnant, has been employed[1] and has worked in the establishment for at least eighty days during the 12 months immediately preceding the date of her delivery. A woman who does not give notice to her employer requesting for the maternity benefits and statutory leave is not disentitled to receive her benefits under the Act.

Employment of Pregnant Woman: The Act discourages the employing of a woman within 6 weeks of her delivery (miscarriage or medical termination of pregnancy) and prohibits an employer from assigning or making a pregnant woman to do arduous work involving long hours of standing or any work which can affect her health. Safeguards for the pregnant woman are inbuilt in the Act which avoids her dismissal or discharge on account of her absence from work in accordance with the terms of the Act, and ensures her a maternity benefit or medical bonus even in the event of such dismissal or discharge.

The Maternity Benefit extends its benevolent protection to women who have also suffered from a miscarriage or medical termination of pregnancy[2] as also women who are required to undergo a tubectomy operation[3], besides illness arising out of pregnancy, delivery, premature birth of child, miscarriage or medical termination of pregnancy or tubectomy operation. In terms of the Act, every woman who is entitled to maternity benefit is also allowed a medical bonus of ₹ 250[4].

Nature of offence under the Maternity Benefit Act	Penalty
Failure to pay maternity benefit.	Imprisonment of three months which may extend to one year and fine of ₹ 2000 which may extend to ₹ 5000.
Dismissal or discharge of woman in circumstances provided for under the Act.	Imprisonment of three months which may extend to one year and fine of ₹ 2000 which may extend to ₹ 5000.

Food Safety and Standards Act, 2006

The Act covers all present food laws and has a single regulatory body. The NGOs engaged in public awareness programmes or campaigns for the quality standards in food products, action and redressal against adulterated food by unscrupulous vendors, sellers and manufacturers.

1. Maternity Benefits apply even when is not direct and is through a contractor.
2. A woman who has suffered miscarriage or medical termination of pregnancy shall, on production of the prescribed proof, be entitled to leave with wages at the rate of maternity benefit, for a period of 6 weeks immediately following the day of her miscarriage or medical termination of pregnancy.
3. On production of prescribed proof, the woman is entitled to leave with wages at the rate of maternity benefit for a period of two weeks immediately following the day of operation.
4. This is in cases where no pre-natal confinement and post-natal care is provided for by the employer free of charge.

Under this Act the detailed provisions regarding admissibility and levels of food additives, contaminants, food colours, preservatives etc., have varied. In view of multiplicity of laws, their enforcements and standard setting as well as various implementing agencies detrimental to the growth of nascent food processing industry and is not conductive to effective fixation of food standards and their enforcements, this Act has been enacted. Particularly in this Act the facilitations have been made to avoid the rigid standards and facilitates with the scientific advancements and modernisations in respect of food products and their consumptions.

The Offences and Penalties under this Act

Offences	Offenders	Punishments
1. Selling food not of the nature or substance or quality demanded.	Person who sells.	Penalty upto ₹ 2,00,000
2. Manufacture of sub-standard foods.	Manufacturer himself or the person working on his behalf.	Penalty upto ₹ 5,00,000
3. Misbranding of foods.	Misbrander himself or any person on his behalf.	Penalty upto ₹ 3,00,000
4. Misleading advertisement.	Person who publishes	Penalty upto ₹ 10,00,000
5. Manufacture of food containing extraneous matter.	Person himself or any person on his behalf.	Penalty upto ₹ 1,00,000
6. Failure to obey direction of Food Safety Officer.	Food business operator or importer.	Penalty upto ₹ 2,00,000
7. Unhygenic or unsanitary processing or manufacturing of food.	Person himself or any other person working on his behalf.	Penalty upto ₹ 1,00,000
8. Possession of adulterant.	Person himself or any person on his behalf.	Penalty upto ₹ 1,00,000
9. Manufacture or sale of unsafe food.	Person himself or any person on his behalf.	Penalty upto ₹ 5,00,000
10. Interference of seized items.	Person himself or any person on his behalf.	Penalty upto ₹ 2,00,000
11. False information.	Provider of false information.	Imprisonment upto 3 months and fine upto ₹ 2,00,000
12. Obstruction or impersonation of Food Safety Officer.	Person impersonating or or obstructing.	Imprisonment upto 3 months and fine upto ₹ 1,00,000
13. Carrying out food business without licence.	Person himself or any other person on his behalf.	Imprisonment upto 6 months and fine upto ₹ 5,00,000

Prisoners Act, 1900[1]

For NGOs focusing on the life and times of prisoners, the Prison Act, 1894 and Prisoners Act, 1900 are a relevant piece of legislation providing a broad legal framework for the different aspects of prison officers, prisons (includes reformatory schools), prisoners confined in prison by an order of a court in India – specifically covering issues of safe custody for prisoners, treatment and custody of lunatic prisoners, women prisoners, also life term prisoners and death sentence. Prison administration is governed by the Prison Act, 1894. Section 27 of the Prison Act, 1894 provides that unconvicted prisoners ought to be kept apart from convicted criminals – however our jails do not generally afford such a 'luxury' and unconvicted persons are berthed alongside hardened criminals, leading to an inevitably unfortunate 'contamination' of prisoners.

Psychiatric attention lacking: Krishna Iyer Committee noted that lack of psychiatric attention in prisoners was a serious shortfall and affected the well-being of (female) prisoners.

***Degrading acts prohibited by prison officers*:** For a prisoners welfare NGO section 15 of the Prisoners Act, 1900 will be relevant – the section expressly empowers officers in charge of prisons to "give effect to sentences of Courts". It is at this juncture that there is scope for inhuman arbitrary treatment by prison officers to prisoners. The direction of section 15 'to give effect' to sentences does not give a prison officer an unfettered hand to unleash inhuman treatment on a prisoner detained, retained, imprisoned under his custody. It is illegal for an officer to exceed or go beyond what the sentence has provided for the prisoner and a violation of Article 19. For example in a rigorous imprisonment sentence, the prisoner cannot be forced to do harsh labour which would require the prisoner to do degrading acts e.g. forcing a prisoner to carry night soil – the prisoner may seek a *habeas* writ (1980 3 SCC 488: (1980) 2 SCR 557: AIR 1980 SC 1579[2]).

Children of Prisoners: Children born in jail and those who accompany their mothers to jail get to live behind bars for no fault of theirs. While jails do provide for their food and clothing, no legislation in India specifically focuses on them. They are 'neglected children[3].' Provisions of creche, qualified staff are hitherto untouched areas which NGOs may focus on for services offered to prisoners. The West Bengal Human Rights Commission in Annual Report 1997-98 noting decline in quality of service and supplies recommended that NGOs could be entrusted with certain jail services.

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989[4]

For a voluntary organisation engaged in the welfare activities relating to the Scheduled Castes and Scheduled Tribes, this Act is a detailed lengthy piece of

1. Act 3 of 1900.
2. *Sunil Batra* v. *Delhi Administration.*
3. Even children under the Juvenile Justices Act are entitled to certain rights.
4. Act 33 of 1989 dated 11th September, 1989.

legislation which gives effect to their mission statement of welfare of Scheduled Castes and Tribes. The Act in essence underlines the chorus "The Scheduled Castes and Scheduled Tribes are 'protected' by law and any offending act can invite express punishment by law." The Act has provided for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of offences.

A perusal of section 3 of the Act, conveys a strong reprisal for offenders. Section 3 describes what offences against a Scheduled Caste or a Scheduled Tribe individual appropriate punishment. Section 3 reads as under:

"3. *Punishments for offences of atrocities*.—(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe:—

(i) forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance;

(ii) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his promises or neighbourhood;

(iii) forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity;

(iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;

(v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;

(vi) compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'begging' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government;

(vii) forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law;

(viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(ix) gives, any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;

(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;

(xiii) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;

(xiv) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to;

(xv) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence,

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe:—

(i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death;

(ii) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine;

(iii) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(iv) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place

for human dwelling or as a place for custody of the property by a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine;

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;

(vi) knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence; or

(vii) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence".

In terms of section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, the State Governments have been specifically directed to encourage Non-Government Organisations for establishing and maintaining Awareness Centres and organising workshops and provide them necessary financial and other sort of assistance. Section 10 of these Rules provides for the appointment of a Special officer in an identified area to co-ordinate with Non-Governmental Organisations and provide necessary facilities and financial and other type of assistance for maintaining Awareness Centres or organising workshops to educate the persons belonging to the Scheduled Castes and the Scheduled Tribes about their rights and the protection available to them under the provisions of various Central and State enactments or rules and schemes.

Norms for Relief Amount

S. No.	Name of offence	Minimum amount of Relief
1	2	3
1	Drink or eat inedible or obnoxious substance [Section 3(1)(i)]	₹ 25,000 or more depending upon the nature and gravity of the offence to each victim and also commensurate with the indignity, insult, injury and defamation suffered by the victim.
2	Causing injury, insult or annoyance [Section 3(1)(ii)]	Payment to be made as follows:—

1	2	3
3	Derogatory act [Section 3(1)(iii)]	I. 25% when the chargesheet is sent to the court. II. 75% when accused are convicted by the lower court.
4	Wrongful occupation or cultivation of land, etc. [Section 3(1)(iv)]	At least ₹ 25,000 or more depending upon the nature and gravity of the offence. The land/ premises/water supply shall be restored where necessary at Government cost. Full payment to be made when chargesheet is sent to the Court.
5	Relating to land, premises and water [Section 3(1)(v)]	
6	Beggar or forced or bonded labour [Section 3(1)(vi)]	At least ₹ 25,000 to each victim. Payment of 25% at FIR stage and 75% on conviction in the lower court.
7	Relating to right to franchise [Section 3(1)(vii)]	Up to ₹ 20,000 to each victim depending upon the nature and gravity of the offence.
8	False, malicious or vexatious legal proceedings. [Section 3(1)(viii)]	₹ 25,000 or reimbursement of actual legal expenses and damages or whichever is less after conclusion of the trial of the accused.
9	False and frivolous information [Section 3(1)(ix)]	
10	Insult, intimidation and humiliation [Section 3(1)(x)]	Upto ₹ 25,000 to each victim depending upon the nature of the offence. Payment of 25%, when chargesheet is sent to the court and rest on conviction.
11	Outraging the modesty of a woman [Section 3(1)(xi)]	₹ 50,000 to each victim of the offence. 50% of the amount may be paid after medical examination and remaining 50% at the conclusion of the trial.
12	Sexual exploitation of women [Section 3(1)(xii)]	
13	Fouling of water [Section 3(1)(xiii)]	Up to ₹ 1,00,000 or full cost of restoration of normal facility, including cleaning when the water is fouled. Payment may be made at the stage as deemed fit by District Administration.
14	Denial of customary rights of passage [Section 3(1)(xiv)]	Up to ₹ 1,00,000 or full cost of restoration of right of passage and full compensation of the loss suffered, if any. Payment of 50% when chargesheet is sent to the court and 50% on conviction in lower Court.
15	Making one desert place of residence [Section 3(1)(xv)]	Restoration of the site right to stay and compensation of ₹ 25,000 to each victim and reconstruction of the house at the Government cost, if destroyed. To be paid in full when chargesheet is sent to the lower Court.

1	2	3
16	Giving false evidence [Section 3(2)(1) and (ii)]	At least ₹ 1,00,000 or full compensation of loss or harm sustained. 50% to be paid when chargesheet is sent to the court and 50% on conviction by the Court.
17	Committing offences under the Indian Penal Code punishable with imprisonment for a term of 10 years or more [Section 3(2)]	At least ₹ 50,000 depending upon the nature and gravity of the offence to each victim and/or his dependants. The amount would vary if specifically otherwise provided in the Schedule.
18	Victimization at the hands of a public servant [Section 3(2)(vii)]	Full compensation on account of damages or loss or harm sustained. 50% to be paid when chargesheet is sent to the Court and 50% on conviction by lower Court.
19	Disability. The definitions of physical and mental disabilities are contained in the Ministry of Welfare, G.O.I. Notification No. 4-2/83-HW.III, dated 6-8-1986 as amended from time to time. A copy of the notification is at Annexure-II	
	(a) 100% incapacitation— (i) Non-earning Member of a family	At least ₹ 1,00,000 to each victim of offence. 50% in FIR and 25% at chargesheet and 25% on conviction by the lower Court.
	(ii) Earning Member of a family	At least ₹ 2,00,000 to each victim of offence. 50% to be paid on FIR/ Medical examination stage, 25% when chargesheet sent to Court and 25% at conviction in lower Court.
	(b) Where incapacitation is less than 100%	The rates as laid down in a (i) and (ii) above shall be reduced in the same proportion, the stages of payments also being the same. However, not less than ₹ 25,000 to non-earning member and not less than ₹ 30,000 to an existing member of a family.
20	Murder/Death: (a) Non-earning Member of a family	At least ₹ 1,00,000 to each case. Payment of 75% after post-mortem and 25% on conviction by the lower Court.
		At least ₹ 2,00,000 to each case. Payment of 75% after post-mortem and 25% on conviction by the lower Court.
	(b) Earning Member of a family	In addition to relief amounts paid under above items, relief may be arranged within three months of date of atrocity as follows:—

1	2	3
21	Victim of murder, death, massacre, rape, mass rape and gang rape, permanent incapacitation and dacoity	(i) Pension to each widow and/or other dependants of deceased, SC and ST @ ₹ 1,000 per month, or Employment to one member of the family of the deceased, or provision of agricultural land, and house, if necessary by outright purchase. (ii) Full cost of the education and maintenance of the children of the victims. Children may be admitted to Ashram, Schools/residential schools. (iii) Provisions of utensils, rice, wheat, dals, pulses, etc. for a period of three months.
22	Complete destruction/burnt houses	Brick/stone masonry house to be constructed or provided at Government cost where it has been burnt or destroyed.


WE WANT WORLD CUP NOT WORLD WAR
WE WANT WORLD CUP.
World cause can wait. I need a break
WORLD CUP

Weekly Holidays Act, 1942[1]

The noble intention of the Act is to provide for the grant of weekly holidays to persons (other than those employed in a confidential and/or managerial capacity) employed in shops[2], restaurants[3] and theatres[4] in India and the closing of the establishment for an entire day in one week[5] . The Act prohibits an employer from deducting the wages of his employee on account of this statutory one day of holiday[6] and Inspectors appointed by the State Government have express powers to enter and inspect the premises, examine any records, registers or notices required to be maintained by the employer with respect to the weekly holidays of the employees and connected matters. Violation of specific provisions of this Act invites the levy of fines from twenty-five rupees upto two hundred and fifty rupees.

Wild Birds and Animals Protection Act, 1912[7]

This Act can effectively serve as effective legal defence or proactive protection of wild life (birds and animals in their wild state) in India by volunteers/NGOs whose field of work is care of wildlife. The Act enables the making of better provisions for the protection and preservation of certain wild birds and animals. The State Government simply notifies a "close time[8]" for wild birds and animals (or the female or immature of these birds and animals) in notified territories of India pursuant to which it is an offence under this Act to capture, kill, sell or

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1. Act 18 of 1942.
2. [Section 2(d) of the Weekly Holidays Act] –"shop" includes any premises where any retail trade or business is carried on, including the business of a barber, or hair dresser, and retail sales by auction, but excluding the sale of programmers, catalogues, and other similar sales at theatres.
3. [Section 2(c) of the Weekly Holidays Act] – "Restaurant" means any premises in which is carried on principally or wholly the business of supplying meals or refreshments to the public or a class of the public for consumption on the premises but does not include a restaurant attached to a theatre.
4. Section 2(e) – "theatre" includes any premises intended principally or wholly for the presentation of moving pictures, dramatic performances or stage entertainments.
5. (Section 3 of the Weekly Holidays Act) Closing of shop - (1) Every shop shall remain entirely closed on one day of the week, which day shall be specified by the shop-keeper in a notice permanently exhibited in a conspicuous place in the shop.
6. Refer section 6 of the Weekly Holidays Act.
7. Act 8 of 1912 dated 8th September, 1912.
8. *3. Close time.*—The State Government may, by notification in the Official Gazette, declare the whole year or any part thereof to be a close time throughout the whole or any part of its territories for any kind of wild bird or animal to which this Act applies, or for female or immature wild birds or animals of such kind; and, subject to the provisions hereinafter contained, during such close time, and within the areas specified in such notification, it shall be unlawful—
   (a) to capture any such bird or animal, or to kill any such bird or animal which has not been captured before the commencement of such close time;
   (b) to sell or buy, or offer to sell or buy, or to possess, any bird or animal which has not been captured or killed before the commencement of such time, or the flesh thereof;
   (c) if any plumage has been taken from any such bird captured or killed during such close time, to sell or buy, or to offer to sell or buy, or to possess, such plumage.

buy, offer to sell or buy, possess any bird or animal or its flesh/plumage. A first offence[1] for violating 'close time' in a notified territory of India, calls for levy of a fine of upto fifty rupees and conviction thereafter invites punishment with imprisonment upto one month and/or fine upto one month, and an order for confiscation[2] of the animal, bird (also its flesh or plumage) may follow in addition to the aforesaid punishment and fine. In its discretion, the State Government can permit a course of action which would otherwise violate 'close time' for wild animals and birds, under a license, and in the interest of scientific research[3].



1. Refer section 4 of the Wild Birds and Animals Protection Act, 1912.
2. Refer section 5 of the Wild Birds and Animals Protection Act, 1912.
3. Refer section 7 of the Wild Birds and Animals Protection Act, 1912.

12

CASE LAW ON TRUSTS AND SOCIETIES

A chronological study of judicial precedent depicts that Indian Courts have consistently supported, encouraged and spurred genuine, positive, progressive causes of Indian NGOs. It is heartening to note that most judicial decisions on relevant social issues are more or less forward looking in the context of time and circumstance of the relevant case and have been aligned with global principles on social issues of human rights, development and environment *viz.*, principles enumerated by the United Nations Charter. Like a responsible parent or overseer of moral, ethical and legal issues, Indian Courts have not hesitated in throwing out frivolous issues, *mala fide* cases camouflaged by well wishers of social causes.

Judicial Decisions on 'Development versus Environment'

The Courts have been confronted upfront time and again on Development versus Protection of Environment, animal welfare and people welfare and there has been a noticeable consistency in judicial response – the Court promotes progress, and progress and development will in almost all cases result in some amount of pain to the environment and its people. Where NGOs have convincingly portrayed the seriousness of adverse effects of a proposed developmental programme and a reasonable balance between development and environment cannot be arrived at, the Courts have not failed to step in and tone down or prohibit developmental activities. To the credit of both NGOs and public spirited citizens and mature decisions of the Courts, there have been laudatory results in matters like steps to be taken for operation clean up around the Taj Mahal for protection of this wonder of the world, etc. With judicial review, Indian courts have left a trail of inspiring precedents in the field of environmental litigation. By means of public interest litigation (PIL) for protecting the fundamental rights of the people, the Supreme Court can entertain even a complaint written as a letter addressed to the court by the aggrieved persons or public spirited persons who have taken up the cause, the Supreme Court thereafter proceeds on the ground that a clean and wholesome environment is part of the Fundamental Right to Life enshrined in the Indian Constitution.

Decisions on Women's and Children's Issues

NGOs instituting cases on sensitive issues relating to crime and violence against women have been mostly successful in obtaining legal redressal. There is also a noticeable consistency in the pro-children's welfare attitude of the

Indian Courts. The Courts have from time to time graciously handled with kid gloves children's issues concerning misuse or abuse of their welfare such as child labour, sexual exploitation, child trafficking. Child Labour and Education are two specific areas where landmark judgments have been passed by the Indian judiciary (Refer topic on "Child" for discussion). Offences by juvenile delinquents have been dealt with a reasonable amount of concern – but sadly it is the treatment of child offenders in custody, or during the process of reformation that leaves much to be desired.

Judicial Decisions on functioning of Trusts and Societies

In terms of quantity, there appear to be more cases instituted by and on behalf of Trusts and Societies than *vice versa*. Whether this implies that the general public is usually at peace with the benevolent identity of NGOs cannot be said with certainty, because in several instances for every 'good work' done by a dutiful NGO there is another who is allegedly black listed for misuse of funds and dubious activities. In terms of generalization, the type of cases instituted against NGOs are in the nature of public breach of trust, misuse of trust funds, removal of unfit trustees, mismanagement of the trust. Cases by and on behalf of the NGO revolve around lease and license matters of trust property and related issues of eviction, dispossession, declaration of ownership, disputes on elections of the office bearers, disputes on recognition and affiliation, etc. A registered NGO has a legal identity and this is a two edged sword that permits it to legally fight with third parties as also face legal action from strangers and from its own members.

Notes on NGO cases

⇒ Dispute among members regarding authenticity of constitution of society for holding election on that basis

Varinder Partap Singh Sandhu v. *Pritam Singh Sarinh,* (2010) 5 SCC 482.

The appellant relied upon a copy furnished by the University. The copy relied upon by the High Court was not the constitution of the Society at all. Therefore, the order of the High Court cannot be sustained. Necessarily the election should be held as per the constitution of the Society. Neither of the party has produced certified copy of the constitution of the society. Therefore, direction has been given to the Registrar of Societies to identify and authenticate the constitution of the Society and thereafter, take necessary steps to hold elections in accordance with such constitution.

⇒ No trust is created in respect of money deposited with Bank at instance of Court

Krishna Gopal Kakani v. *Bank of Baroda,* AIR 2009 SC 344: 2008 AIR SCW 7379: (2008) 13 SCC 485.

Section 88 of the Indian Trusts Act, 1882 deals with the question of an advantage gained by a fiduciary. An analysis of this section would show that the Bank, to whom the money had been entrusted, was not in the capacity set out in the provision itself. The question of any fiduciary relationship, therefore, arising between the two must, therefore, be ruled out. Therefore it cannot be said that a trust had been created merely because some money had been deposited with the Bank at the instance of the Court on account of the auction of the goods.

⇒ Expulsion member disentitle to retain interest in allotted dwelling unit

Col. Sartaj Singh Sohi (Retd.) v. *State of Punjab,* C.W.P. No. 4115/2008, Punjab and Haryana High Court, date of decision: 9-10-2009.

Any member of maintenance society who has acted detrimental to interests and proper working of the Co-operative Society, can be expelled and such expulsion would disentitle member to retain interest in allotted dwelling unit.

⇒ ***An executor becomes a trustee only upon completion of administration of trust***

Krishna Kumar Birla v. *Rajendra Singh Lodha,* 2008 AIR SCW 2557: 2008 (4) SCC 300: AIR 2008 SC (Supp) 1663.

The husband was merely named as an executor in the Will of wife. An executor becomes a trustee only upon completion of administration of trust. Administration of trust being incomplete, the husband did not become an executor. He, therefore, was not a trustee.

⇒ ***Option conferred on a trustee to file either a suit or to move court for opinion, advice or direction in management of trust property can be exercised only when recourse to both remedies are available and such an application can be maintained only when nature and purport thereof is satisfied.***

Ashok Kumar Kapur v. *Ashok Khanna,* 2007 AIR SCW 1865: AIR 2007 SC (Supp) 6.

The jurisdiction of the court under section 34 admittedly is confined to opinion, advice or direction. An application would be maintainable on any question. However, such questions must arise "respecting the management or administration of the trust property".

The questions should not be for any 'detail, difficulty or importance or otherwise not proper in the opinion of the court for summary disposal'. Such an application may be filed without instituting a suit but maintainability of such an application would mainly depend upon the nature and purport thereof. Merely an option has been conferred on a trustee to file either a suit or to move the court for its opinion, advice or direction in terms of section 34 of the Act. Such an option can be exercised only when recourse to both the remedies are available.

⇒ ***Jurisdiction of court to give opinion, advice or direction is confined to management or administration of trust property***

Ashok Kumar Kapur v. *Ashok Khanna,* 2007 AIR SCW 1865.

The jurisdiction of the court is not only confined to opinion or advice but also extends to issuance of direction, but such opinion rendered, or advice given or direction issued only to a trustee. It does not envisage an adjudication. It does not ordinarily envisage determination of the right, title or interest of a member of the trust or a beneficiary in relation to the trust property, although such a question may have to be incidentally dealt with. The provisions of section 34 of the Act must be given its literal meaning. The court cannot exercise a jurisdiction which is not vested in it. A court can exercise jurisdiction, provided it is vested therewith. An order without jurisdiction over the subject-matter would render the decision a nullity.

⇒ ***Words 'management or administration of trust property' would not apply when object of trust itself has been fulfilled.***

Ashok Kumar Kapur v. *Ashok Khanna,* 2007 AIR SCW 1865.

The object of the Trust in question was to pay pension and annuities to the members of the Trust or dependants, including their widows and children (upto the age of 21 years), in accordance with the rules of the Trust. The entire funds of the Trust were admittedly provided by the 'Company'. It is further admitted that all the beneficiaries under the Trust have been paid off and hence the purpose has been completely fulfilled and executed without exhaustion of the

funds of the Trust, except to the extent of amount which amount after one time payment has been transferred to the 'LIC'. Consequently, the Trust has now no further liability/responsibility towards any of its beneficiaries. The balance sum remaining with the Trust fund has, therefore, to be returned to the Company in view of section 83 of the Act. Section 34 of the Act may not be strictly applicable in the present case because that provision enables the principal Civil Court of original jurisdiction to give an opinion, advice or direction on any present questions respecting the management or administration of the trust property. The words 'management or administration of the trust property' would not apply when the object of the Trust itself has been fulfilled.

⇒ ***Suit against public trusts by persons cannot be brought unless persons' activities were not for protection of interests of public trusts***

Vidyodaya Trust v. *Mohan Prasad R.*, 2008 AIR SCW 1817: AIR 2008 SC 1633: (2008) 4 SCC 115.

Every suit claiming reliefs specified in section 92 of the Civil Procedure Code cannot be brought under the section, but only the suits which besides claiming any of the reliefs are brought by individuals as representatives of the public for vindication of public rights. The courts have to be careful to eliminate the possibility of a suit being laid against public trusts under section 92 by persons whose activities were not for protection of the interests of the public trusts. Though the colour of legitimacy was sought to be given by projecting as if the suit was for vindicating public rights the emphasis was on certain purely private and personal disputes. Thus, the court was not certainly wrong in holding that the grant of leave was legal and proper.

⇒ ***The society registered under provisions of the Karnataka Societies Registration Act does not come under the public authority defined under the Right to Information Act***

S.S. Angadi v. *State Chief Information Commissioner, Bangalore,* AIR 2008 Kant 149: 2008 AIHC 2785: 2008 (6) Kant LJ 478.

Under section 2(h)(c) and (d) the Right to Information Act, "Public authority" means any authority or body or institution of self-government established or constituted by any other law made by State Legislature; by notification issued or made by the appropriate Government and includes any body owned, controlled or substantially financed; non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government. However, the respondent is not created by any other law made by the State Legislature. It is also not a body owned or controlled or substantially financed by the Government. It is also not a non-Government organisation substantially financed directly or indirectly by funds provided by the appropriate Government. Therefore, such association cannot be treated as public authority.

⇒ ***Letter of administration cannot be granted to registered society.***

Jagdish Chandra Varshney v. *Muni Varshney,* AIR 2006 All 347: 2006 AIHC 3063: 2006 (4) ALJ 726.

Section 236 of the Indian Succession Act is couched in negative terms and provides that letters of administration cannot be granted to any person who is minor or of unsound mind or to any association of individuals unless it is a company which satisfies the conditions prescribed by rules to be made by the State Government in this behalf. The society is an association of individuals registered under the Society Registration Act. As such it is not entitled to the grant of letters of administration which will be attached to administer the properties of the deceased. The legal bar created under the provisions of Indian

Succession Act does not allow the court to proceed to consider the validity of the Will and to decide other issue.

⇒ ***Amendment of bye-laws by resolution cannot be held ineffective solely for non-compliance of requirement of 'Special Resolution' when amendments have been approved unanimously by all the members.***

Jagmohan Dalmiya v. *Board of Control for Cricket in India*, AIR 2008 Cal 227: 2008 AIHC 939 (NOC).

The resolution adopted was not a 'Special Resolution'. However, an amendment cannot be held ineffective solely for non-compliance of requirement of Special Resolution where the meeting was attended and amendment of the rules was approved by all the members unanimously. It is not necessary for the court to delve into the question of whether the formality of notice of the requisite period as required by statute of intention to propose a resolution for amendment of the bye-laws was given or not. No one sought adjournment of the resolution on the ground of want of adequate time to consider the proposed resolution.

⇒ ***Council is not State as the very formation of council is as an independent society.***

Lt. Governor of Delhi v. *V.K. Sodhi*, AIR 2007 SC 2885: 2007 AIR SCW 5268: (2007) 10 SCALE 41.

The two elements, one, of a function of the State, namely, the co-ordinating of education and the other, of the council being dependant on the funding by the State, satisfied two of the tests indicated to constitute 'State'. But, from that alone it could not be assumed that council is a State.

The Government does not have deep and pervasive control over the working of the council. It does not have financial control in the sense that once the finances are made available to it, the administration of those finances is left to the council and there is no further government control. Thus the council is not a state or other authority within the meaning of Article 12 of the Constitution of India. After all the very formation of an independent society under the Societies Registration Act would also suggest that the intention was not to make the body a mere appendage of the state.

⇒ ***Court while issuing directions to society regarding service benefits to employees cannot ignore financial implications of implementing directions.***

Lt. Governor of Delhi v. *V.K. Sodhi*, AIR 2007 SC 2885.

The object of the council is laudable and it has to coordinate and promote education in the State. Its resources are limited and the main income is by way of grant from the State Government. When the council pleads that it cannot spend the whole of the grant or a major portion of the grant in paying salaries and emoluments to its employees and if it does so, that may tend to frustrate the very object with which the society was formed, it is an argument that has to be considered weighty by a court called upon to exercise jurisdiction under Article 226 of the Constitution of India. A court cannot issue a direction which would tend to frustrate the very object with which a society like the council is formed or a body like the council is created. After all, there may be a point of time in a welfare State where the right of the employees must be subservient to the right of the society. In the matter of education, surely, the interests of the society at large should prevail and issue of any direction that may endanger such interest must be done with extreme caution and only after careful deliberation. In the case of bodies like the council, therefore, the court cannot ignore the financial implications of implementing the directions that it is called upon to issue.

⇒ A heavy burden lay on society to prove oral gift made out in case of obtaining title by reason of same.

Kamakshi Builders v. *Ambedkar Educational Society,* AIR 2007 SC 2191: 2007 AIR SCW 3850: (2007) 7 SCALE 475.

It is expected of a person who has obtained title by reason of an oral gift; *Hiba* although permissible in law, but a heavy burden lay on him to prove the same. The society is an educational society. It was running an institution on the suit property. It was, therefore, expected of it that it would insist on execution of a registered deed of gift. It may be true that, as a defendant, it was not required to examine that Respondent 1D who had been siding with the plaintiff by calling him as a witness by getting summons to depose in the court. But that only by reason of the fact that Respondent did not get himself examined for one reason or the other, the same would mean that the society discharged its burden. It may be true that conduct of the parties would be relevant, but what would be more relevant is the conduct of a party, who from his status of a tenant acquires the status of the owner of the property. Acquisition of such ownership by way of gift and, thus, wholly without consideration, is not expected of a society registered under the Societies Registration Act. Not only that it was acknowledged such donation to the donor by issuing an appropriate letter in that behalf (which is said to have been done). As the said letter has not been produced, the inference which could be drawn therefrom is that either defendant witness did not tell the truth that such a letter was written and/or an adverse inference could be drawn that had the said letter been produced, the same would have gone against the interest of the society. In making an oral gift by an owner of the property in favour of his tenant apart from it being wholly unlikely, actual delivery of possession is imperative. There is nothing on record to show that at any point of time, that respondent had delivered the possession of the premises in question to the society. The society being a tenant, continued to be a tenant. Its status as a lessee on its own showing merged into a higher status. At what point of time such status was changed been a relevant fact. It was within the special knowledge of that respondent. The onus lay heavily on him to prove the same. It failed to discharge its burden. As the claim of the society was based on a title, the onus was on him to prove the same. The society failed to discharge the same and, therefore, the learned Judge has committed no error in passing a decree in favour of the plaintiff.

⇒ Project being on an yearly basis could not have been sanctioned on a regular basis

I.C.M.R. v. *K. Rajyalakshmi,* 2007 AIR SCW 1642: AIR 2007 SC (Supp) 585.

Appellant-society carries out various research activities through various Schemes/Projects. For one of such projects, the Central Government admittedly grants grants-in-aid on year to year basis. The terms of appointment of respondent was also on year to year basis. However, the project continued for a long time for one reason or the other. Respondent prayed for regularisation of her services but the same has been rejected. Before the tribunal, the Union of India was not impleaded as a party respondent. The question, therefore, which was required to be taken into consideration by the tribunal was as to whether despite the fact that a long number of years have passed, the services of the respondent could have been directed to be regularised despite the fact that her appointment was on a purely *ad hoc* basis on a temporary post. The project being on a yearly basis, post could not have been sanctioned on a regular basis. In absence of Union of India, the tribunal and consequently the High Court committed a manifest error

in entertaining the question as to whether the project should have been made a permanent one or not. The project could not have been directed to be made a permanent one at the instance of the appellant.

⇒ ***In absence of recourse to rule 14 of Order XXXIV, CPC purchase of Mortgaged Property by mortgagee is only in trust for mortgagor***

M.R. Satwaji Rao v. *B. Shama Rao,* 2008 AIR SCW 3833: AIR 2008 SC 2328: (2008) 5 SCC 124

Though the suit schedule property was mortgaged by the respondents with the appellants by way of possessory mortgage deed, the respondents never parted with the possession thereafter, as the appellants chose simultaneously to let the respondents continue in possession as tenants on a monthly rental basis. A second mortgage deed was executed in favour of the appellants by the respondents towards arrears of rent for the period from the date of let out to the date of execution of second mortgage deed. Rule 14 of Order XXXIV, CPC prohibits the mortgagee to bring the mortgaged property to sell otherwise than by instituting a suit for sale in enforcement of the mortgage. Admittedly, the suit by the mortgagee was not in terms of the rule.

The suit brought by the appellant was very much for seeking satisfaction of claims arising under the suit schedule property and the same not being on a suit for sale instituted in enforcement of the mortgage, the same is barred under the rule. Thus, though the mortgagee purchased the mortgaged property pursuant to the decree, in the absence of recourse to the rule, the relationship of mortgagor and mortgagee continues to subsist even thereafter, and his purchase is only in trust for the mortgagor.

⇒ ***Artists working with NGOs are not "workmen" – Production of Dramas is not an "industry" as per the Industrial Disputes Act, 1947***

Bharat Bhawan Trust v. *Bharat Bhawan Artists Association,* AIR 2001 SC 3348: 2001 AIR SCW 3194: (2001) 7 SCC 630

Creative artists entered into agreement with the Director of the Trust for production of drama and theatre management and ancillary duties thereof. On disputes arising about terms and duration of employment, the Supreme Court ruled that:

(i) An artist engaged in the production of drama or in theatre management or to participate in a play cannot be termed a 'workman' under the Industrial Disputes Act, 1947. The artist who is skilled in his work, does not engage in any manual, unskilled or clerical work.

(ii) The institution producing dramas and preserving art as in this case is not an 'industry'. The activities *viz.,* production of plays does not involve a systematic activity resulting in some kind of service or goods.

⇒ ***Trust which donates money to poor students but is controlled by specific persons does not cease to be 'Public' and 'Charitable'***

Mulla Gulam Ali and Safiabai D. Trust v. *Deelip Kumar and Co.,* AIR 2001 SC 2403: 2001 AIR SCW 2427: (2001) 4 Supreme 498

In a suit for delivery of possession to the Trust, of Trust property leased out for a shop, the Supreme Court ruled out the applicability of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 to this Trust which was deemed as a Public Charitable Trust. The Court did not accept the contention that since control of administration of the Trust was vested in a group of people, the Public character of the Trust was lost. The Court ruled that a Trust engaged only in the above activities is and continues to be a Public Charitable Trust.

⇒ Recognised Schools can own and run a vehicle with no permit

Catholic Diocese of Gorakhpur Education Society v. *State of Uttar Pradesh,* AIR 2001 All 196: 2001 AllLJ 1512: 2001 (1) All CJ 336

Section 66 of the Motor Vehicles Act, 1988 exempts certain categories of vehicle owners from the mandatory permit required for owning and running a transport vehicle.

In the instant case, the petitioner school was a recognised educational institution and had the relevant documents of affiliation to prove the same. Thus, the authorities were not entitled to insist on a permit for the vehicle used by it.

⇒ Society has a right to obtain Letters of Administration and enjoy bequeathed property

Jain Society for the Protection of Orphans, for India v. *State,* AIR 2001 Del 484: 2003 (1) Marri LJ 335: 2002 (1) Rec Civ R 263

A society registered under Societies Registration Act, 1860 can seek letters of administration and it is not disqualified by section 236 of the Succession Act.

A person applying for a letter of administration and probate stands in a fiduciary position with the Court to ensure that the estate of the deceased is utilised and transferred to the beneficiaries appropriately. A society has the legal capacity to sue and be sued, and a legal representative can be fixed on it unlike in an association of persons where the accountability would be difficult to fix. Testators do bequeath estates to voluntary organisations like registered societies and the society ought not to be precluded from utilising the estate since a legatee should derive benefit of the bequeathed estate. A person authorised by the society may apply for probate or letter of administration.

⇒ Universities reserve the right to grant affiliation to Teachers' Training Institutes

Rahul Dhaka Vikas Society v. *Guru Gobind Singh Indraprastha University,* AIR 2001 Del 154: 2001 (89) DLT 337: 2001 (58) DRJ 290

Petitioner registered Society was running a teachers' training institute by providing B.Ed courses. Petitioner was granted recognition by the National Council for Teacher Education but refused affiliation with Guru Gobind Singh University. The Petitioner Society contended that in terms of the National Council for Teachers Education Act, 1993 (sections 14 and 16), the University was bound to grant affiliation. The Delhi High Court ruled that the University retained discretion to grant affiliation though refusal to grant affiliation on the basis of non-fulfillment of conditions for affiliation, despite recognition by the Council, would have to be justified.

⇒ Assistant Registrar can order a Society to hold elections of office bearers

Committee of Management, Adarsh Shiksha Niketan v. *The Assistant Registrar, Firms, Societies and Chits, Varanasi Division,* AIR 2000 All 288: 2000 AIHC 4477: 2000 All LJ 2447.

Where elections of the society were not held for a long period of time (5 years had lapsed since the previous elections) and it was not a case of dispute between two rival parties rather a claim of both parties regarding holding of elections after 5 years; an order of the Assistant Registrar directing fresh meeting of General Body for electing office bearers of society was not improper.

⇒ Trust can use allotted land only for allotted purpose

Jhulelal Charitable and Education Trust v. *State of Rajasthan,* AIR 1999 Raj 309: 1999 (1) Raj LR 614: 1999 (2) Raj LW 842

Succession Act does not allow the court to proceed to consider the validity of the Will and to decide other issue.

⇒ ***Amendment of bye-laws by resolution cannot be held ineffective solely for non-compliance of requirement of 'Special Resolution' when amendments have been approved unanimously by all the members.***

Jagmohan Dalmiya v. *Board of Control for Cricket in India,* AIR 2008 Cal 227: 2008 AIHC 939 (NOC).

The resolution adopted was not a 'Special Resolution'. However, an amendment cannot be held ineffective solely for non-compliance of requirement of Special Resolution where the meeting was attended and amendment of the rules was approved by all the members unanimously. It is not necessary for the court to delve into the question of whether the formality of notice of the requisite period as required by statute of intention to propose a resolution for amendment of the bye-laws was given or not. No one sought adjournment of the resolution on the ground of want of adequate time to consider the proposed resolution.

⇒ ***Council is not State as the very formation of council is as an independent society.***

Lt. Governor of Delhi v. *V.K. Sodhi,* AIR 2007 SC 2885: 2007 AIR SCW 5268: (2007) 10 SCALE 41.

The two elements, one, of a function of the State, namely, the co-ordinating of education and the other, of the council being dependant on the funding by the State, satisfied two of the tests indicated to constitute 'State'. But, from that alone it could not be assumed that council is a State.

The Government does not have deep and pervasive control over the working of the council. It does not have financial control in the sense that once the finances are made available to it, the administration of those finances is left to the council and there is no further government control. Thus the council is not a state or other authority within the meaning of Article 12 of the Constitution of India. After all the very formation of an independent society under the Societies Registration Act would also suggest that the intention was not to make the body a mere appendage of the state.

⇒ ***Court while issuing directions to society regarding service benefits to employees cannot ignore financial implications of implementing directions.***

Lt. Governor of Delhi v. *V.K. Sodhi,* AIR 2007 SC 2885.

The object of the council is laudable and it has to coordinate and promote education in the State. Its resources are limited and the main income is by way of grant from the State Government. When the council pleads that it cannot spend the whole of the grant or a major portion of the grant in paying salaries and emoluments to its employees and if it does so, that may tend to frustrate the very object with which the society was formed, it is an argument that has to be considered weighty by a court called upon to exercise jurisdiction under Article 226 of the Constitution of India. A court cannot issue a direction which would tend to frustrate the very object with which a society like the council is formed or a body like the council is created. After all, there may be a point of time in a welfare State where the right of the employees must be subservient to the right of the society. In the matter of education, surely, the interests of the society at large should prevail and issue of any direction that may endanger such interest must be done with extreme caution and only after careful deliberation. In the case of bodies like the council, therefore, the court cannot ignore the financial implications of implementing the directions that it is called upon to issue.

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Appellant-society carries out various research activities through various Schemes/Projects. For one of such projects, the Central Government admittedly grants grants-in-aid on year to year basis. The terms of appointment of respondent was also on year to year basis. However, the project continued for a long time for one reason or the other. Respondent prayed for regularisation of her services but the same has been rejected. Before the tribunal, the Union of India was not impleaded as a party respondent. The question, therefore, which was required to be taken into consideration by the tribunal was as to whether despite the fact that a long number of years have passed, the services of the respondent could have been directed to be regularised despite the fact that her appointment was on a purely *ad hoc* basis on a temporary post. The project being on a yearly basis, post could not have been sanctioned on a regular basis. In absence of Union of India, the tribunal and consequently the High Court committed a manifest error

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Though the suit schedule property was mortgaged by the respondents with the appellants by way of possessory mortgage deed, the respondents never parted with the possession thereafter, as the appellants chose simultaneously to let the respondents continue in possession as tenants on a monthly rental basis. A second mortgage deed was executed in favour of the appellants by the respondents towards arrears of rent for the period from the date of let out to the date of execution of second mortgage deed. Rule 14 of Order XXXIV, CPC prohibits the mortgagee to bring the mortgaged property to sell otherwise than by instituting a suit for sale in enforcement of the mortgage. Admittedly, the suit by the mortgagee was not in terms of the rule.

The suit brought by the appellant was very much for seeking satisfaction of claims arising under the suit schedule property and the same not being on a suit for sale instituted in enforcement of the mortgage, the same is barred under the rule. Thus, though the mortgagee purchased the mortgaged property pursuant to the decree, in the absence of recourse to the rule, the relationship of mortgagor and mortgagee continues to subsist even thereafter, and his purchase is only in trust for the mortgagor.

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A person applying for a letter of administration and probate stands in a fiduciary position with the Court to ensure that the estate of the deceased is utilised and transferred to the beneficiaries appropriately. A society has the legal capacity to sue and be sued, and a legal representative can be fixed on it unlike in an association of persons where the accountability would be difficult to fix. Testators do bequeath estates to voluntary organisations like registered societies and the society ought not to be precluded from utilising the estate since a legatee should derive benefit of the bequeathed estate. A person authorised by the society may apply for probate or letter of administration.

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Where elections of the society were not held for a long period of time (5 years had lapsed since the previous elections) and it was not a case of dispute between two rival parties rather a claim of both parties regarding holding of elections after 5 years; an order of the Assistant Registrar directing fresh meeting of General Body for electing office bearers of society was not improper.

⇒ ***Trust can use allotted land only for allotted purpose***

Jhulelal Charitable and Education Trust v. *State of Rajasthan,* AIR 1999 Raj 309: 1999 (1) Raj LR 614: 1999 (2) Raj LW 842

Land granted to Petitioner Trust under a license was already marked by town planning rules for educational purposes. The Trust therefore was not allowed to obtain the land for use of charitable purposes. Educational purpose is not synonymous with charitable purpose and where the Trust is held to be both educational and charitable, it cannot obtain land marked for educational purpose for use of charitable purpose.

⇒ ***Frivolous, embarrassing personal details of a Trust can be struck off from pleadings before Court***

Pran Nath Lekhi v. *Rajiv Gandhi Foundation,* AIR 1999 Del 40: 1998 (5) AD Del 181: 1999 (48) DRJ 775

The Plaintiffs sought leave of the Court to file a suit for declaration that there was breach of trust (Rajiv Gandhi Foundation) created for public purpose and violation of the Trusts Act, 1882 in working of the Trust. The plaintiff besought the Court to examine the working of the Trust and to remove unfit trustees. The Delhi High Court on perusal of the Plaint questioned the relevance of certain allegations which the Court deemed were wholly unnecessary and made with a view to embarrass the defendants. Allegations about questionability about Pt. Jawaharlal Nehru's earnings from his law practice, allegations of Mrs. Gandhi writing to Sanjay Gandhi to pay rent to a landlady, and poor financial condition of Rajiv and Sanjay Gandhi during their stay at London were deemed as irrelevant for the purpose of the suit and these paragraphs were directed to be struck off from the plaint.

⇒ ***Trust providing residence to employee teacher amounts to a privilege of occupancy and not tenancy***

Chinnupashabi v. *Fatehsingh Sikshan Sanstha and its Trustees,* AIR 1999 Bom 383: 1999 (4) All MR 405: 1999 (3) Mah LJ 167

The Bombay Rents, Hotel and Lodging House Rate Control Act, 1947 unambiguously provides for rent to be paid by money. Alternatively, section 105 of the Transfer of Property Act, permits that in a lease of immoveable property, a service rendered can also be the consideration for the lease. In this case, the Trust running an educational institution gave a room for accommodation to one of its teachers. In a dispute arising for return of the premises from the teachers' heirs, the Mumbai High Court determined that possession of the premises was made available by the employer as residence, he was not required to pay rent; section 105 of the Transfer of Property Act does not apply to urban residential tenancy which are covered under the Bombay Rent Act. The Court held that the teacher was not a tenant and his occupation was a personal privilege of occupation and not tenancy.



13

DID YOU KNOW SERIES ON NGOs

Andhra's women bag international order for Haj caps

A rural woman's self-help group in Godavari district, Andhra Pradesh, bagged a substantial international order for the supply of prayer lace caps which were to be gifted by the King of Saudi Arabia to Haj pilgrims as a royal goodwill gesture[1].

Blue pottery withstands drought in Rajasthan

While the massive drought in Rajasthan is forcing countless villagers to migrate to cities in search of work, Kot Jevar village near Jaipur remains completely unaffected by the disaster. It is the humble potter's wheel that is responsible for this self-sufficiency. This village, has revived the craft of blue pottery and is thriving on it. Despite the fifth successive year of drought in Rajasthan not one of the 600 families in Kot Jevar has been forced to migrate in search of employment. For the past three years, the State Government has not felt the need to initiate drought relief work here. Kot Jevar alone exports around Rs. 3 crore worth of blue pottery every year. This has inspired nearly 36 other villages near Jaipur to take up the lucrative craft[2].

Training to handle garbage in a scientific manner helps turn Mumbai's rag-pickers into skilled workers

A two-month course, started by a local nature park in Mumbai, offers rag-pickers with some elementary and useful education — how to segregate and treat garbage (as wet garbage and dry garbage. Wet garbage can be used in gardening, and dry waste can be recycled). They are also taught the finer aspects of gardening. The course has helped nearly 450 rag-pickers get better employment. 26,000 more rag-pickers have registered for the programme.

For Mumbai, which generates an estimated 10,000 tonnes of garbage everyday, such a programme could go a long way in reducing the pressure on already overloaded dumping grounds" says Meena Vinayak Silavat, a rag-picker trainee. The Brihanmumbai Municipal Corporation has already issued a notice that, starting April, it will only accept separated garbage from housing societies[3].

1. Source: NDTV, October 25, 2002.
2. Source: NDTV, December 2, 2002.
3. Source: NDTV, January 4, 2003.

Society for barefoot living

The Society for Barefoot Living aims to promote barefoot acceptance worldwide and to work towards regaining the freedom our parents and grandparents had to go barefoot anywhere. It provides a friendly forum to share experiences, thoughts, feelings, and tips on bare feet and barefoot on; members are enabled to schedule get-togethers to meet and go barefoot with other members to have fun. It is an online interactive group with website http://www.barefooters.org



Part D
NGOs and Government

14

NGOs and Government

Grants-in-aid from the Government of India

Government of India allocates the grants-in-aid for carrying out the specific programmes as well as for block general purposes. These grants are made out to voluntary organisations who are involved in implementing these programmes. Grants-in-aid has been defined as the sum which a superior authority assigns to an inferior authority. For allocation of the financial resources, the Government of India has framed General Financial Rules for deciding the right agency. The terms and conditions governing these specific schemes are from the grants-in-aid rules mentioned in these schemes of the various ministries and departments. Some of these rules and conditions are given below:

1. The organisation should be registered under an appropriate Act such as Societies Registration Act, 1860, Charitable Trusts Act, Cooperative Societies Act or under any law in force.
2. The organisation seeking funds should be a recognised and reputed one; its work should be reported satisfactory by the concerned department of the State Government.
3. It must be a properly constituted broad based Managing/ Executive Committee with its powers, duties and responsibilities clearly defined and laid down in a written constitution.
4. It should have been engaged in social welfare/development activities for a minimum period of 3 years prior to seeking the grant.
5. The programmes and services of the voluntary organisations should be open to all irrespective of caste, creed and religion.
6. The organisations must be financially sound. It must have facilities, research personnel and experienced staff for undertaking activities for which grant is allocated.
7. It should not be a profit-oriented body benefiting any specific individual or a group of individuals.
8. The grantee organisations must execute a bond, that it will abide by all the conditions of grant, failing which the grant shall be refunded.

9. Grantee agency must accept the right of grantor to inspect the aided agency at any time in order to study its working and to ensure proper utilization of grants.
10. Agency should be able to generate its own resources including the contributions from the community.
11. Grant should not be utilised for purposes other than those for which it is sanctioned.
12. Agencies should have certain methods and procedures relating to budgets, accounting and audit of the grants sanctioned.
13. The institutes shall maintain separate accounts of the programmes for which the grant is received, distinct from the accounts of its normal activities.
14. The payment of grant may be stopped or earlier grants recovered if the grantor is not satisfied with the utilisation of funds for the stated objectives.
15. The grantee agency should submit the duly audited accounts as and when required.
16. The grantee organisations should submit the progress reports as specified in the relevant scheme.
17. The grant organisations should maintain an account with a bank or a post office in the name of the institutions, to be operated by at least two office bearers.
18. The grantee organisations are prohibited from handing over the funds and the implementation of the programmes to another organisation.
19. The accounts should be audited by a Chartered Accountant or a government authority within two months from the close of the financial year.
20. Grants shall not be allocated for the same purposes if already financed by some other department of the Central Government.
21. Unspent balance of the grant should be refunded at the close of the year.
22. The agency must guarantee that the assets acquired out of the grants funds shall not be sold, dispossessed or alienated, encumbered, mortgaged at any time for purposes other than those for which grant is sanctioned. A record of such assets should be maintained by the grantee in the form prescribed by the grant-giving agency.

Government Schemes : There are various schemes sponsored by the various Central Government ministries such as Ministry of Social Justice and Empowerment, Ministry of Health and Family Welfare, Ministry of Human Resources Development. The applicant voluntary organisations applying for such grants in aid should file these through the relevant State level department. The recommendations made by these departments shall be considered while sanctioning these grants.

Schemes sponsored by the Ministry of Social Justice and Empowerment, Shastri Bhawan, New Delhi

Name of the scheme	Purposes and the eligibility
1. Scheme for Welfare of children in need of care and Protection.	The main purpose of the scheme is to rehabilitate destitute children as normal citizens of the country. The scheme seeks to provide individualized and personal care to destitute children with the help of institutional and non-institutional care. The scheme is implemented through registered voluntary (national level) organisation.
2. Scheme for Foster Care Services.	The objective of the scheme is welfare of the destitute children by providing the homely atmosphere to those who become destitute at an early age. It is made available to reputed V.O. working in the field of promoting foster care services in India.
3. Organisational Assistance to Voluntary Social Welfare Organisations.	The objective is to provide assistance to voluntary organisations with a view of developing their organisational efficiency.
4. Scheme for Assistance to disabled persons for purchases/fittings of aids/appliances.	The main objective is to assist needy physically handicapped persons in procuring quality and modern aids and appliances that can promote their physical rehabilitation. The eligible are the individuals who are physically handicapped.
5. Grants-in-aid for sponsoring research on rehabilitation of the handicapped.	The projects are intended to help in finding the solutions to the problems of the handicapped and facilitate their effective rehabilitation. The projects under this sponsoring shall be of an applied nature and result and action-oriented.
6. Scheme of Assistance to organisations for disabled persons.	The scheme seeks to provide financial assistance mainly for developing services in the area of prevention of disabilities, early detection and intervention; education, training and rehabilitation.
7. Assistance to Voluntary agencies for prevention, detection and management of childhood disabilities.	This scheme is jointly promoted by the Government of India and UNICEF. It seeks projects of Non-Governmental Organisations having a focus on preventive and early detection of disability among children. Projects eligible for this assistance would include community and family based rehabilitation programmes for disabled children; efforts aimed at creating awareness among families and community leaders; innovative programmes of training

Name of the scheme	Purposes and the eligibility
	in early detection/intervention methods for families etc.
8. Grants-in-aid rules for sponsoring research.	The scheme provides assistance for conducting research in the field of social welfare, social policy and social development. Priorities within these broad areas will be given to projects of an applied nature keeping in view plan policies and programmes.
9. Grants-in-aid rules for sponsoring publications.	Grants are provided for publication of studies and documentation in the field of social welfare and policy development.
10. Grants-in-aid for Work-shops/ seminars.	The Ministry also provides financial assistance for organising workshops/ seminars which will help disseminate research findings, identify problem areas, discuss problems and identify research needs etc. in the broad field of social welfare, social policy and social development.
11. Grant-in-aid rules for supporting projects (Tribal Development) of all India or Inter-State nature.	The scheme aims at supporting action oriented studies on problems of scheduled tribes particularly in the field of economic development for generation of necessary data to improve formulations and implementations of tribal developmental programmes.

Schemes sponsored by the Ministry of Human Resource and Development, Shastri Bhawan, New Delhi

Name of the scheme	Purposes and the eligibility
12. Scheme of Assistance for construction/ extension of Hostel buildings for working women with a day care centre.	The scheme seeks to provide suitable accommodation in healthy environment for the working women and day-care centres.
13. Scheme for short stay homes for women and girls.	
14. Scheme for setting up women's training centres/institutes for rehabilitation of women in distress.	The main objective is to rehabilitate destitute women through vocational trainings and residential care.
15. Scheme for organisational assistance to voluntary organisations for women and child development.	The scheme seeks to support and help the V.O. for women and children to maintain their central offices, a vital input in the running of their activities.
16. Scheme of Nutrition programmes through Bal-wadis and Day-care centres for pre-school children in the age group of 3 to 5 years.	The programme seeks to provide supplementary food for children in the age of 3-5 years and envisage that it would form a basis for the development of other services like health, education and welfare.

Name of the scheme	Purposes and the eligibility
17. Scheme for Assistance to V.O. working in the field of adult education.	Promotion of adult education and eradication of mass illiteracy.
18. Scheme of Assistance to V.O. for early childhood education.	Early Childhood education programmes.
(Universalisation of education).	

Schemes sponsored by the Ministry of Health and Family Welfare, New Delhi

1. Scheme for improvement of health services.	The scheme seeks to provide the medical care to rural and high density urban slums for expansion and improvement of existing nursing facilities.
2. Schemes for sanctioning grants-in-aid for promoting the voluntary blood donation camps.	The scheme seeks to promote intensive and extensive education of the public and motivate them to donate the blood.
3. Grants to Under-graduate college of Indian Systems of Medicines and Homoeopathy run by the V.O.	The scheme seeks to provide the financial assistance with a view to improve the standard of education in the under-graduate ISM and homeopathy colleges for the purchase of lab equipment and setting up of the book banks.
4. Grants-in-aid to the V.O. engaged in the Family welfare programmes.	The scheme seeks to encourage V.O. to take up the family welfare programmes by running the family welfare centres.

Other schemes sponsored by various ministries

Concerned Department/Board	Scheme	Purposes
National Wasteland Development Board Lok Nayak Bhawan, New Delhi.	Scheme for Grant of Financial assistance to V.O.	The objective under this scheme is to bring under productive uses the wastelands in the country through a massive programme of afforestation and tree planting. The major steps include identification of lands, motivation of villagers, assisting the villagers either as a group in obtaining trees, rights on lands etc. The Board shall emphasise on the issues relating to laying of nurseries, forestry and pasteur development activities and development of culturable wasteland including improvement of land.
National Fund for Rural Development (Department for Rural Development), Krishi Bhawan, New Delhi.	Scheme for Rural Development.	The Govt. accords highest priority to programmes of rural development for attaining the objectives of increasing agricultural production, creating employment, eradicating poverty and bringing overall improvement in the rural economy. Projects qualifying for these assistance: —construction and maintenance of rural link roads —construction and maintenance of drinking water projects —construction and maintenance of hospitals and dispensaries —establishment of rural industries and animal product units for generating employment in rural areas

Ministry of Home Affairs

Provides grants-in-aid to voluntary organisations to undertake activities for the cause of national integration and communal harmony such as inter-community celebration of National Days and festivals, cultural shows, essays and painting competitions, inter-regional camps, exchange of visits, public meetings, exhibitions.



PART E

TAXATION OF NON-PROFIT ORGANISATIONS IN INDIA

15

Taxation of Non-profit Organisations in India

To encourage Indians to generously donate to voluntary organisations, an NGO would chorus that "Charity begins at home". However, the hiccups in free giving are genuine since there is a perceived misdirection of charitable funds and misuse of charitable funds for political ends which are reasonable concerns when weighed against the attractive deductions in I.T. for charity donations.

Tax concessions are vital for operational efficiency of NGOs and encourage philanthropy and social investment, donor support and increase the effectiveness of non-profit sector activity – but the eligibility of an NGO for tax rebates are not automatic and are instead hedged in with numerous conditions to be satisfied in order to attract benevolence of the taxing authorities. For example, the concept of 'development', 'welfare' itself undergoes differential interpretation by the government and hence an NGO has to tread carefully to rightfully claim concessions. If NGOs attain certain level of self regulation and acceptable standards of accountability and credibility, then tax concessions would follow as a matter of course.

NGO = Society = Trust = non-profit company for income tax purposes

The Income-tax Act, 1961 applies to all NGOs (trust, society or section 25 company) uniformly throughout India. It treats all of them equally in terms of exempting their income. In this Chapter all references to NGO includes trusts, societies, associations, institutions and section 25 companies. The defining principle for assessing tax liability is that education, health, scientific and other organisations that serve the public interest that are entitled to a tax preference.

Tax liability of NGOs

An important principle under the Income-tax Act is that NGOs in India that have a public charitable purpose are not liable for any Income-tax, provided certain statutory conditions are fulfilled. NGOs ought not to be taxed at all in as much as they are not "owned" by anyone and cannot distribute profits as such. Profits earned by an NGO from economic activities are reinvested or spent or invested on appropriate non-profit activities.

The taxation of an NGO formed or created for charitable or religious purposes or for the promotion of science, literature, education, sports, fine arts is governed mainly by sections 11, 12, 12A, 12AA and 13 and some clauses of section 10. NGOs which are not covered under any of these sections are assessable under section 164. Only a registered NGO is entitled to tax benefits.

NGOs can be classified as those claiming exemption under section 11 (generally charitable trusts), NGOs claiming exemption under section 10; and NGOs assessable under section 164.

Income Tax Rates

A.Y. 2014-15

Taxable Income	Tax Payable
Upto ₹ 160,000	NIL
From ₹ 160,000, to ₹ 300,000	10% of Income above ₹ 160,000
From ₹ 300,001 to ₹ 500,000	₹ 14,000 + 20% of income above ₹ 300,000
Above ₹ 500,000	₹ 54,000 + 30% of income above ₹ 500,000
Surcharge	NIL
Education Cess	2% of Total tax payable
Secondary & Higher Education Cess	1% of Total tax payable

Filing of NGO tax returns

State Level: Returns have to be filed annually at State level with the charity commissioner or registrar of societies.

Centre level: Filings with the Income-tax authorities. In certain cases, it is sufficient that the NGO has filed the return and received an acknowledgment slip from the relevant authorities, the Assessing Officer will intimate the NGO of any tax or interest which is determined to be due from the assessee NGO or similarly if a refund is due. Filings are to be done with the Home Ministry, New Delhi also where the NGO receives foreign funds and is registered with the FCRA department in terms of the Foreign Contribution (Regulation) Act.

Tax Assessment of an NGO

The income of an NGO is assessed and charged in the hands of the NGO. Since the profit or surplus is not distributed (usually) among its members, the NGO alone is assessed and charged to tax. The income of a trust is assessable in the hands of trustees or upon beneficiaries, as representative assessee.

INCOME OF AN NGO

Nature of income of an NGO	Tax treatment of NGO income
Subscriptions from members.	Subscription/Membership fees: Where the NGO receives membership fees, then these life membership subscriptions and entrance fees which are collected from members are capital receipt and not collected for any specific service, these fees can be considered as capital. Subscription fees and membership fees of this nature is not treated as income for the purpose of computing total income.
Corpus donations and other Donations and voluntary contributions.	(i) Corpus donations are capital contributions and should not be included in computation of the total income of the NGO. NGOs are duty bound to maintain their Corpus donations and cannot spend these donations like any other income. However, interest or dividend derived from the investment of such donations may be used on the objects or running of the NGO activities. Only the donor can give the direction for the donation to be applied to the corpus of the organisation and such a direction should be in writing and trustees cannot wrest a discretion to use a particular donation as corpus donation. Corpus donations are exempt from tax in terms of section 11(1)(d). (ii) Donations received as box donations or anonymous donations are income, but not corpus donations; voluntary contributions under section 80G, entitle the donor to a rebate on tax.
Income from property held under trust.	Income derived from property held under trust, and voluntary contributions (except corpus donations) are exempt to the extent the same is applied to charitable or religious purposes or accumulated for application of such purposes subject to certain conditions.
Capital gain on transfer of property held under trust.	Capital gains: If an NGO sells its capital asset, capital gain arising on such sale is not liable to tax if the net sale proceeds are utilized in acquisition of a new capital asset.
Income from any business carried on by the NGO which is incidental to the attainment of its objects.	Business Income: Under section 11(4A), if the income from business is incidental to the attainment of the NGO's objects and separate books of accounts are maintained by the organisation in respect of such business, the profit is not considered for taxation. Income from a business undertaking that is itself held in trust for charitable purpose is also exempt (section 11(1)(a)).
Income from any other business carried on by the NGO.	

INDIAN NGOs AND CHARITY

Charitable nature of the NGO

The public and charitable nature of an NGO is crucial for availing certain exemptions offered by the Income-tax Act, 1961. This makes it necessary to examine the tax interpretation of the concept of "charitable purpose". Tax benefits accrue on confirmation that an NGO is formed for charitable purposes and is applying its income for these purposes.

"Charitable purpose" under the Income Tax Act

Section 2(15) of the Act includes relief to the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility in the ambit of a "charitable purpose". It is pertinent to note that section 2(15) though an inclusive one, does not mention religious activities. The intention appears to be that the colour of charity should be secular charity and not religious charities and thus there are instances when money spent on religious institutions are often shown as spent on relief of the poor.

- A purpose must in order to be charitable, be directed to the benefit of the community or a section of the community; *Commissioner of Income-tax* v. *Ahmedabad Rana Caste Association.*[1]
- Provision made for the poor class of the public, well-earmarked as recipient of such benefits, make the object of the bounty a charitable one; *Commissioner of Income-tax* v. *Kamala Town Trust.*[2]
- The relief of the poor must not be relief to a body of private individuals but must have a public character; *Mercantile Bank of India (Agency) Ltd. (in re:).*[3]
- Education need not be for the poor only but may extend to the rich. Education includes professional education, higher education as well as technical education. Thus the income of a Bar Council from investments held solely for legal education would not be liable to tax.
- Monetary help for marriages or sacred-thread ceremonies can amount to charity permissible under section 2(15); *Anand Swaroop Brijendra Swaroop Charitable Trust.*[4]
- If the primary/dominant object of an institution is charitable, any other object which by itself might not be charitable but is merely ancillary or incidental to the primary/dominant purpose would not prevent the trust or institution from being a valid charity; *Commissioner of Income-tax* v. *Andhra Chamber of Commerce.*[5]
- Charitable purpose under section 80 G does not include any purpose, the whole or substantially the whole of which is of a religious nature; *Upper Ganges Sugar Mills Ltd.* v. *Commissioner of Income-tax.*[6]

1. (1983) 140 ITR 1.
2. 217 ITR 699.
3. (1942) 10 ITR 512: 46 Cal WN 777 (Cal).
4. 187 ITR 656.
5. 1965 55 ITR 722: AIR 1965 SC 1281: (1965) 1 SCR 565.
6. 1997 (227) ITR 578: AIR 1997 SC 3121: 1997 AIR SCW 3166.

- Erection of a memorial hall, *Shaheed Smarak Bhavan* was considered charitable by the Madhya Pradesh High Court in the matter of *Mahakoshal Shaheed Smarak Trust.*[1]

Profit activities are not always business activities

An activity resulting in profit cannot be treated as business as a matter of course. When an NGO hires out halls for functions, or provides subsidized rest houses for pilgrims, this does not amount to business by the NGO.

Discussion on NGO tax exemptions under sections 10, 11, 12 and 164

Section 10

(Please refer Appendix on "The Income-tax Act, 1961" for text of section 10.)

The income of certain NGOs engaged in activities pertaining to scientific research, education, charitable hospitals, is exempt from payment of tax in terms of section 10 of the Income-tax Act. Categories below are the types of NGOs entitled for tax exemptions under specific provisions of section 10.

Section 10—Exemption

No.	*Type of association or institution*	*Exemption under section 10*
1.	Tax exemption for Scientific Research Associations.	Subject to certain conditions, in terms of section 10(21), any income of an approved scientific research association under section 35(1)(ii) is exempt[2]
2.	Tax exemption for Sports Associations.	Tax exemption for sports associations is not available w.e.f. A.Y. 2003-04 under section 10(23). Section 10(23) has been omitted by Finance Act, 2002 w.e.f A.Y. 2003–04. Sports Associations can claim exemption under sections 11 and 12.
3.	Tax exemption for Professional Associations.	Income of Indian Professional Associations whose objects include the control, supervision, regulation or encouragement of the professions of law, medicine, accountancy, engineering, architecture or other notified professions of company secretary, chemistry related materials management, town planning is exempt[3] on fulfilment of certain conditions[4].

1. 140 ITR 795.
2. For claiming exemption under section 10(21), the income of the NGO should be applied or accumulated for application of scientific research; and the NGO invests its funds in specified modes and forms.
3. The following types of income from a Professional Association is not exempt:
   (a) income from house property;
   (b) income received for rendering any specific services; and
   (c) income as interest or dividends from investments of the Professional Association.
4. Conditions for exemption include that the Professional Association applies its income (or accumulates income for application), only on its objects; and the association is an association approved by the Central Government in terms of section 10(23A). Income will be exempt only for the duration of the Government approval.

No.	*Type of association or institution*	*Exemption under section 10*
4.	Tax exemption for notified Charitable or Public Religious Trusts.	In terms of section 10(23C)(iv), income of trust or institution established wholly for public charitable and religious purposes or wholly for pubic religious purposes and notified by the Central Government is exempt on certain conditions.
5.	Educational Institutions	The income of any educational institute, besides Government Financed Educational Institutions and Small Educational Institutions with gross receipts upto 1 crore all of which are established solely for educational purposes and not profit is entitled for exemption on fulfilling certain conditions[1].
6.	Tax exemption for Hospitals and Medical Institutions	The income of any hospital or medical institution[2], which are established solely for philanthropic purposes and not for profit is entitled for exemption on certain conditions[3].
7.	Tax exemption for Khadi or Village Industries Trust	Income[4] of Public Charitable Trusts or registered Societies established solely for development of Khadi and/or village industries and no profit is exempt on certain conditions[5].

Section 11 and 12 exemptions for NGOs

(Please refer Appendix on "The Income-tax Act, 1961" for text of sections 11 and 12.)

Outline of Exemptions under sections 11 and 12

Type of NGOs entitled for exemption	Type of NGOs not entitled for exemption
NGO established wholly for charitable (or religious) purposes, which apply their income towards the charitable (or religious) purposes in India.	An NGO set up for private religious purposes, having no public benefit.

1. Refer section 10(23C)(iiiab), (iiiad) and (iv).
2. The basic principle for considering eligibility for exemption of an NGO running a hospital or medical institution is that the income of the NGO is *only applied for philanthropic purpose and not for profit* in the receiving and treating of people suffering from physical or mental illness including convalescence or rehabilitation. Purpose of *existence* of the NGO and *utilization* of income is given emphasis.
3. Refer section 10(23C)(iiiac), (iiiae) and (via).
4. In terms of section 10 (23B), income of an eligible *Khadi* or village industries NGO is exempt to the extent the income is attributed to production, sale or marketing of *Khadi* or village industries' products.
5. For an NGO to avail exemption hereunder, the NGO should be approved by the Khadi and Village Industries Commission and the NGO applies its income (or accumulates such income for application) solely for the development of *Khadi* and village industries.

Type of NGOs entitled for exemption	Type of NGOs not entitled for exemption
NGO established[1] partly for charitable or religious purposes, which apply their income towards the charitable or religious purposes in India and no part of the income or corpus has been utilized for a purpose other than charitable or religious.	NGO established partly for charitable or religious purposes, part of whose income is used[2], applied, enures, directly or indirectly for the benefit of (a) the author of the trust, (b) substantial contributor whose total contribution exceeds Rs. 50,000, (c) author or contributor is a HUF, a member of the family, (d) trustee or manager of the NGO, (e) relative of the author, founder, contributor, member; (e) any concern in which any of the above mentioned persons have a substantial interest.
NGOs (with charitable purpose) which seek to promote international welfare of interest to India and applying their income for this purpose outside India.	NGOs which have not invested or deposited their funds in the modes or forms specified under section 11(5), or which holds any shares in a company[3] subject to certain conditions.
NGOs for the benefit of scheduled castes/ tribes, backward classes or women and children.	An NGO created or established[4] for the benefit of any particular religious community or caste, other than scheduled castes/tribes, backward classes or women and children.

Section 12A prescribes that (a) registration with the Commissioner of Income-tax and (b) Compulsory audit where total income exceeds Rs. 50,000 in a previous year by a qualified chartered accountant as conditions for eligibility for exemption under sections 11 and 12.

Section 13(1)(c) emphasizes that no part of the NGO income or property should benefit the founder, relatives, managers, substantial contributors of the NGO.

Section 164 exemption for NGOs

(Please refer Appendix on "The Income-tax Act, 1961" for text of section 164.)

Societies which are not eligible for exemptions prescribed under sections 10 or 11 or those whose part income alone is eligible can be examined under section 164 for their tax liability.

Registration of NGO with Income-tax Office

An application for registration is to be submitted to the Commissioner of Income-tax by the applicant NGO within one year of establishment or formation.

1. Established before April 1, 1962.
2. Section 13(3).
3. Not being a Government company or corporation.
4. Established on or after April 1, 1962. Those established before April 1, 1962 are eligible for exemption under section 11.

The prescribed form for registration is Form 10A. Form 10A is to be submitted alongwith the following documents:

(a) Instrument of creation of the trust or documents evidencing the creation of the trust where the NGO is a trust (original or certified copy); or Memorandum of Association and bye-laws of the society;

(b) If the NGO was existing for an 'x' number of completed years prior to application for registration, to submit audited statement of accounts of the NGO as available (two copies).

Please note that the Commissioner while examining an application for registration is entitled to call for and study additional documents and may make specific queries about the NGO. Based on the Commissioner's satisfaction of relevant factors like (a) factum of existence of the NGO, (b) objects of the NGO, (c) name of the NGO, if identically named NGOs are already in existence in the same jurisdiction, (d) Public nature of the NGO, (e) ownership of property of NGO property, (f) estimates of value of moveable and immoveable properties, (g) genuineness of the identity of the trustees or members named as persons responsible for running the NGO, (h) nature of income of the NGO – the NGO may be granted registration. Care should be taken with the application for registration, since no appeal lies against a refusal for registration on sufficient grounds.

TAX REBATE FOR CHARITABLE INDIANS

Planning benevolence for Indian tax payers

The Income-Tax authorities acknowledge charitable giving and graciously offer tax relief on charitable in the following ways:

(i) *Section 80G:* Amount of deduction: Donors[1] can get tax deduction of 50 per cent.[2] or even 100 per cent.[3] of the amount donated to Voluntary organisations working in specified areas having a "public charitable purpose" and registered with the Income-tax Authority under this section. Donation implies donation of sums of money: Donations in kind (such as computers, medical equipment, vehicles, etc.) are not welcomed by section 80G to claim deduction and it is only 'sums paid as donations' which are eligible donations. NGOs established for charitable purposes are required to obtain approval from the Commissioner of Income-tax and fulfil certain conditions in terms of section 80G(5). (Please *see* Appendix on "Specimen Trust Deed of a General Charitable Trust" for copy of Form 10G for obtaining approval from the Commissioner). The beneficiary NGO issues a certificate to the donor to enable the donor to claim the tax deduction. This is the most widely used tax benefit for charitable donations. Conditions for deduction: The amount donated should not,

1. Individuals, associations, companies, etc.
2. For donations to funds/institutions listed as (b) to (f) and (zc) to (zg) in the list given in this paragraph.
3. For donations to funds/institutions listed as (a) and (g) to (zb) in the list given in this paragraph.

however, exceed 10 per cent of the donor's gross total income after subtracting allowable deductions (other than the deduction under section 80G) for the purpose of tax rebate. In order to qualify for exemption under section 80G, the NGO must be a wholly charitable, recognized and a tax-exempt institution. Receipts issued to donors by NGOs should bear the number and date of the section 80G certificate and indicate the period for which the certificate is valid. Any sum paid by assessee as donation to the following trusts/funds/institutions qualify for section 80G rebate:

(a) National Defence Fund set up by the Central Government;
(b) Jawaharlal Nehru Memorial Fund;
(c) Prime Minister's Drought Relief Fund;
(d) National Children's Fund;
(e) Indira Gandhi Memorial Fund;
(f) Rajiv Gandhi Memorial Fund;
(g) Prime Minister's National Relief Fund;
(h) Prime Minister's Armenia Earthquake Relief Fund;
(i) Africa (Public Contributions India) Fund;
(j) National Foundation for Communal Harmony;
(k) An Approved University or educational institution of national eminence;
(l) The Maharashtra Chief Minister's Relief Fund during the period 1-10-1993 to 6-10-1993;
(m) Any fund set up by the Sate Government of Gujarat exclusively for providing relief to the victims of the Gujarat earthquake;
(n) Chief Minister's Earthquake Relief Fund, Maharashtra;
(o) Any *Zila Saksharata Samiti* constituted in any district for the purposes of improvement of primary education and for literacy and post–literacy activities;
(p) National Blood Transfusion Council or any State Blood transfusion Council;
(q) any State Government Fund set up to provide medical relief to the poor;
(r) Army Central Welfare Fund/Indian Naval Benevolent Fund/Air Force Central Welfare Fund;
(s) Andhra Pradesh Chief Minister's Cyclone Relief Fund, 1996;
(t) National Illness Assistance Fund;
(u) Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund of any State or Union Territory;
(v) National Sports Fund;
(w) National Cultural Fund;

(x) Fund for Technology Development and Application set up by the Central Government;

(y) National Trust for welfare of Persons with autism, Cerebral Palsy, Mental retardation and Multiple Disabilities;

(z) Indian Olympic Association, or any other association or institution established in India and notified by the Central Government as per guidelines in this behalf, for the development of infrastructure for and the sponsorship of, sports and games, in India; (za) Any charitable trust/institution/fund approved under section 80G(5) which applies its income for providing relief to the victims of earthquake in Gujarat or transfers the unutilized income to the Prime Minister's National Relief Fund upto 31-3-2003, and fulfils the conditions specified under section 80G(5C); (zb) government or an approved local authority, institution or association, for the purpose of promoting family planning; (zc) government or any local authority, for any charitable purpose other than the purpose of promoting family planning; (zd) a statutory authority constituted for the purpose of dealing with and satisfying the need for housing accommodation, or for the purpose of planning, development or improvement of cities, towns and villages, or both; (ze) a corporation established by the Central/State Government for promoting the interests of the members of a notified minority community; (zf) any other trust, fund or institution approved under section 80G(5); and (zg) a notified temple, mosque, *gurudwara*, church or other places of public worship or of historic, archaeological or artistic importance.

(ii) *Section 35AC:* This section permits an assessee to deductions for expenditure incurred as payment of any sum to a public sector company or a local authority or to an association or institution approved by the National Committee for carrying out any eligible project or scheme. It is applicable to specified research projects. The benefit under this section requires that the organisation receiving funds itself undertakes the project; and approval has to be sought from the National Committee for Promotion of Social and Economic Welfare in Delhi. Eligible projects and schemes for exemption under section 35AC include one or more of the following:

- Construction and maintenance of drinking water projects in rural areas and in urban slums, including installation of pump-sets, digging of wells, tube-wells and laying of pipes for the supply of drinking water.
- Construction of dwelling units for the economically weaker sections of society.
- Construction of school buildings, primarily for children belonging to the economically weaker sections of society.
- Establishment and running of non-conventional and renewable source of energy systems.

- Construction and maintenance of bridges, public highways and other roads.
- Pollution-control projects.
- Promotion of sports.
- Any other programme for the uplift of the rural poor or urban slum dwellers, as the national committee may consider fit for support, including:
  - (a) family welfare and immunization;
  - (b) tree plantation;
  - (c) social forestry;
  - (d) development of irrigation resources;
  - (e) rural sanitation (construction of low-cost latrines);
  - (f) medical camps in rural areas;
  - (g) rural health programmes;
  - (h) land development and reclamation of waste land or degraded land, with special emphasis on ecological improvement;
  - (i) soil and water conservation, including harvesting of run-off water;
  - (j) non-formal education and literacy, especially for women and children;
  - (k) rural non-farm activities;
  - (l) creation of employment opportunities for urban and rural populations living below the poverty line;
  - (m) supportive services for women to engage in productive work (care of children of working women by providing an improved environment, care and food and by establishing creches/ *balwadis*)
  - (n) leprosy eradication.

(iii) *Section 35(1)(ii) and (iii)* provide for a similar exemption for donations to approved research associations, universities, colleges or other institutions for scientific research, research in social science or statistical research. Approval has to be sought by the research institution from the Department of Scientific and Industrial Research in Delhi. In terms of section 35(1)(ii) or 35(1)(iii) the organisation must maintain a separate account of the money received by it for scientific research or for research in social science or statistical research. It must also submit to the prescribed authority, annual audited return[1] and a balance sheet depicting the assets and liabilities.

What is the colour of money put into collection boxes of hospitals, churches, temples ?

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1. The auditors should also certify that amounts received by the organisation for scientific research or research in social science or statistical research have been spent for that purpose only.

Income received through cash collection boxes at temples, churches, hospitals or schools is not recognized or treated as 'income'. It also does not have the colour of 'capital receipt'.

Tax Forms for NGOs

The following Income-tax forms are relevant for NGOs in terms of sections 10, 10A, 10B, etc.:

Form 10 – Notice to the Assessing Officer in terms of section 11(2) of the Income-tax Act, 1961.

Form 10A – Application for registration of charitable or religious trust or institution under section 12A(a) of the Income-tax Act, 1961.

Form 10B – Audit report under section 12A(b) of the Income-tax Act, 1961 in the case of charitable or religious trusts or institutions.

Form 10G – Application for grant of approval or continuance thereof to institution or fund under section 80G(5)(vi) of the Income-tax Act, 1961.



16

Public Interest Litigation—An Effective Legal Tool

PIL, short for Public Interest Litigation, is by far the most useful tool in the hands of any public-spirited person and since NGOs are meant for public service it comes in handy to them. The Supreme Court has defined PIL in following words:

> Lexically the expression PIL means a legal action initiated in a Court of law for enforcement of public interest or general interest or in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are effected....... Thus, the concept of PIL which has been and is being fostered by judicial activism has become an increasingly important one setting up valuable and respectable records specially in the arena of Constitutional and legal treatment for the un-represented and under represented.[1]

Before the PIL came to hold the fort the problem was that where no injury was caused to any particular person, none had the *locus standi* to approach the court, which meant that a public wrong could not be redressed by the Court. This virtually meant that when the harm is not done to anyone in particular but to all, it could not be judicially remedied, which was a ridiculous position. The concept of PIL liberalized *locus standi* in matters of public concern. Justice P.N. Bhagwati said in this regard:

> It may, therefore, now be taken as well established that where a legal wrong or legal injury is caused to a person or to determinate class of persons by reasons of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reasons of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application...this Court will not insist on the regular writ petition to be filed by the public spirited individual espousing their cause and seeking relief for them. This will

1. *Janata Dal* v. *H.S. Chowdhary*, (1992) 4 SCC 305: AIR 1993 SC 892: 1993 AIR SCW 248.

readily respond even to letter addressed by such individual acting *pro bono publico*.[1]

There has, however, been a note of caution. The Supreme Court has observed:

> Public interest litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paise income litigation". If not properly regulated and abuse averted it also becomes a tool in unscrupulous hands to release vendetta and wreak vengeance as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of a knight errant or poke one's nose into for a probe. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting *bona fide* and having sufficient interest in the proceeding of public interest litigation will alone have a *locus standi* and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration.... Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens...... The court has to be satisfied about: (a) the credentials of the applicant; (b) the *prima facie* correctness or nature of information given by him; and (c) the information being not vague and indefinite. The information should show gravity and seriousness involved.[2]

The Supreme Court has laid down following principles with regard to Public Interest Litigation as safeguards against frivolous and *mala fide* litigation:

1. The Court in exercise of powers under Article 32 and Article 226 of the Constitution of India can entertain a petition filed by any, interested person in the welfare of the people who are in a disadvantaged position and, thus, not in a position to knock the doors of the Court.
2. Issues of public importance, enforcement of fundamental rights of a large number of the public *vis-a-vis* the constitutional duties and functions of the State, if raised, the Court treats a letter or a telegram as a Public Interest Litigation relaxing procedural laws and the law relating to pleadings.
3. Whenever injustice is meted out to a large number of people, the Court will not hesitate in stepping in.
4. The common rule of *locus standi* is relaxed so as to enable the Court to look into the grievances complained on behalf of the poor, the deprived,

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1. *S.P. Gupta* v. *Union of India,* AIR 1982 SC 149: 1982 Rajdhani LR 389: 1981 (Supp) SCC 87.
2. *Ashok Kumar Pandey* v. *State of West Bengal,* (2004) 3 SCC 349: AIR 2004 SC 280: 2003 AIR SCW 6105.

the illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right.

5. When the Court is *prima facie* satisfied about variation of any constitutional right of a group of people belonging to the disadvantaged category, it may not allow the State or the Government from raising the question as to the maintainability of the petition.
6. Although procedural laws apply to PIL cases but the question as to whether the principles of *res judicata* or principles analogous thereto would apply depends on the nature of the petition as also on facts and circumstances of the case.
7. The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a Public Interest Litigation. However, in an appropriate case, although the petitioner might have moved a court in his private interest and for redressal of personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice.
8. The Court in special situations may appoint a Commission, or other bodies for the purpose of investigating into the allegations and finding out facts. It may also direct management of a public institution taken over by such Committee.
9. The Court would ordinarily not step out of the known areas of judicial review. The High Courts although may pass orders for doing complete justice to the parties, they do not have a power akin to Article 142 of the Constitution of India.
10. Ordinarily, the High Court should not entertain a writ petition by way of public interest litigation questioning the constitutionality or validity of a statute or a statutory rule.[1]

What can be challenged

The natural question that arises is that what are the kind of irregularities that can be challenged in a PIL. Broadly speaking, anything that is predominantly public in nature and does not essentially pertain to private interests can be taken to the court through PIL. The fundamental reason for the PIL to be there is to fill in the vacuum left from there being no straight legal injury to any person in particular. Therefore, any such action, governmental or otherwise, that affects public interest or affects any such person who is incapable of seeking legal redressal can be challenged in a writ court by any person who does not have a vexed interest in the case. It does not, however, mean that the benefit should not come at all to the man challenging such an action. It only means that the motivational force behind such litigation should not be predominantly private, for if that is allowed to happen it would erode the socio-legal relevance of the PIL.

1. *Guruvayoor Devaswom Managing Committee* v. *C.K. Rajan*, AIR 2004 SC 561: 2003 AIR SCW 6039: (2003) 7 SCC 546.

Few Illustrative Cases

In *J. Jayalalitha* v. *Government of Tamil Nadu,* AIR 1999 SC 2330: 1999 AIR SCW 2427: (1999) 1 SCC 53, the Supreme Court held that a taxpayer has the right to challenge the misuse or improper use of public property by anyone including the political party in power, especially where a substantial amount of public money is involved.

In *Ramsharan Autyanuprasi* v. *Union of India,* AIR 1989 SC 549: JT 1988 (4) SC 577, the apex court rejected a PIL having found that the case was filed to settle personal dispute.

In *Shiv Sagar Tiwari* v. *Union of India,* AIR 1997 SC 1483: 1997 AIR SCW 195: (1996) 6 SCC 558, a practicing advocate challenged the gross misuse of discretionary power in the allotment of accommodation to government employees. The apex court ordered the cancellation of allotments made on extraneous considerations.

Similarly in *Centre for Public Interest Litigation* v. *Union of India,* 1995 Supp (3) SCC 382, guidelines were issued for the allotment of retail petrol pumps and LPG dealerships in exercise of discretionary quota by the government. In *Common Cause A Registered Society* v. *Union of India,* (1996) 6 SCC 530: AIR 1996 SC 3538: 1996 AIR SCW 3696, the apex Court awarded exemplary damages of Rs. 50 Lacs for arbitrary allotment of petrol pump under the Minister's discretionary quota.

Exemplary damages were also slapped on Pepsi and Coke for defacing the ancient rocks in Himachal Pradesh for advertising and marketing purposes. Even the State Government was not spared and had to shell out damages to the tune of Rs. 1 Crore for dereliction of its duty to preserve the environment.[1]

Right to know the relevant particulars of electoral candidates was held to be within the voters' right to know in *Union of India* v. *Association for Democratic Reforms,* (2002) 5 SCC 294: AIR 2002 SC 2112: 2002 AIR SCW 2186. The electoral candidate was held to be liable to furnish information regarding his position with the criminal law in terms of charge, conviction or acquittal besides his financial position in terms of assets and liabilities, educational qualification so that the voters could make a more informed choice.

In the much talked about *Hawala* case *Vineet Narain* v. *Union of India,* AIR 1998 SC 889: 1998 AIR SCW 645: 1998 Cr LJ 1208 the apex court itself monitored the CBI investigation and also issued directions to insulate the premier investigative agency from extraneous influences. In similar vein the Patna High Court monitored the investigation of fodder scam and issued necessary directions from time to time, as it involved the former Chief Minister of Bihar, Laloo Prasad Yadav, himself.[2]

In *Indra Sawhney* v. *Union of India,* (1992) Supp 3 SCC 217: AIR 1993 SC 477: 1992 AIR SCW 3682, the Supreme Court entertained a PIL filed by an advocate challenging Mandal Commission recommendations regarding reservations in favour of backward classes and a nine judge bench settled the law.



1. *T.N. Godavarman Thirumulpad* v. *Union of India,* (2002) 7 SCALE 417: AIR 2006 SC 1774: 2006 AIR SCW 2082.
2. *Sushil Kumar Modi* v. *State of Bihar,* 1996 (1) PLJR 561.

Part F

Society

17

The Societies Registration Act, 1860

INTRODUCTION

For improving the legal condition of societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, or for charitable purposes the then Government decided to bring out an exhaustive legislation on the subject. To achieve this objective a Bill was introduced in the Legislature.

ACT 21 OF 1860

The said Bill having been passed by the Legislature received its assent on 21st May, 1860. By the Indian Short Titles Act, 1897 (14 of 1897) the title was changed and now it stands as THE SOCIETIES REGISTRATION ACT, 1860 (21 of 1860).

LIST OF AMENDING ACTS AND ADAPTATION ORDERS

1. The Repealing Act, 1874 (16 of 1874).
2. The Indian Short Titles Act, 1897 (14 of 1897).
3. The Repealing Act, 1874 (16 of 1874).
4. The Societies Registration (Amendment) Act, 1927 (22 of 1927).
5. The Government of India (Adaptation of Indian Laws) Order, 1937.
6. The Adaptation of Laws Order, 1950.

THE SOCIETIES REGISTRATION ACT, 1860[1]

(21 of 1860)

[21st May, 1860]

An Act for the Registration of Literary, Scientific and Charitable Societies.

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1. Short title given by the Indian Short Titles Act, 1897 (14 of 1897).

The Act (with the excerption of the first four sections) is based on the Literary and Scientific Institutions Act, 1854 (17 and 18 Vict., c. 112), ss. 20 *et seq.*

It has been declared to be in force in the whole of India, except the Scheduled Districts, by sec. 3 of the Laws Local Extent Act, 1874 (15 of 1874).

It has been extended to the New Provinces and Merged States by Act 59 of 1949.

It has been declared, by notification under section 3(a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:—

West Jalpaiguri		*See* Gazette of India, 1881, Pt. I., p. 74.
The Districts of Hazaribagh, Lohardaga (now the Ranchi Districts, *see* Calcutta	Ditto	1881, Pt. I, p. 504.

Contd. on next page

Preamble.—Whereas it is expedient that provision should be made for improving the legal condition of societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, [1][the diffusion of political education], or for charitable purposes; it is enacted as follows:—

STATE AMENDMENTS

Andhra Pradesh.—After the Preamble, insert the following namely:—

"*CHAPTER* I—General"

[*Vide* Andhra Pradesh Act 12 of 1984, sec. 2 (1) (w.r.e.f. 2-12-1983).]

Delhi.—(i) In the long title, for the words "Literary, Scientific and Charitable Societies", substitute the words "Welfare, Literary, Scientific and Charitable Societies".

[*Vide* Act 26 of 1983, sec. 2 (a) (w.r.e.f. 22-6-1983).]

Contd. from previous page

Gazette, 1899, Pt. I, p. 44), and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singbhum

The Scheduled portion of the	Ditto	1879, Pt. I, p. 383.
Mirzapur District Jaunsar Bawar	Ditto	1879, Pt. I, p. 302.
The Scheduled Districts in Ganjam and	Ditto	1898, Pt. I, p. 870
Vizagapatam Assam (except the North Lushai Hills)	Ditto	1897, Pt. I, p. 299.

It has been extended, by notification under section 5 of the last-mentioned Act, to the following Scheduled Districts, namely:—

Kumaon and Garhwal	*See* Gazette of India,	1876, Pt. I, p. 606.
Ajmer and Merwara	Ditto	1878, Pt. I, p. 380.

It has been declared, by notification under section 3(b) of the same Act, not to be in force in the Scheduled District of Lahaul. *See* Gazette of India, 1886, Pt. I, p. 301.

The Act has been extended to Goa, Daman and Diu with modifications by Reg. 12 of 1962, sec. 3 and Sch., to Dadra and Nagar Haveli with modifications by Reg. 6 of 1963, sec. 2 and Sch. I (w.e.f. 1-7-1965) and to the Union territory of Lakshadweep, by Reg. 8 of 1965, sec. 3 and Sch. (w.e.f. 1-10-1967).

It has been amended in—

C.P. and Berar by C.P. and Berar Act 3 of 1940,
Assam by Assam Acts 14 of 1948, 15 of 1948, 1 of 1952, 7 of 1957 and 11 of 1958,
Bihar by Bihar Acts 30 of 1948, 4 of 1951 and 2 of 1960,
Punjab by East Punjab Acts 32 of 1948, 6 of 1949 and Punjab Act 21 of 1961,
West Bengal by West Bengal Act 16 of 1950,
Andhra by President's Act 10 of 1954,
Madras by Mad. Act 9 of 1960,
Orissa by Orissa Acts 21 of 1958, 8 of 1969 and 9 of 1979,
Maharashtra by Maharashtra Acts 11 of 1968 and 49 of 1971,
Himachal Pradesh by H.P. Act 23 of 1973,
Uttar Pradesh by U.P. Acts 25 of 1959, 52 of 1975, 13 of 1978 and 11 of 1984,
Bombay by Bom. Act 76 of 1958,
Haryana by Haryana Act 23 of 1974,
Pondicherry by Act 9 of 1969, and
Union Territory of Delhi by Act 26 of 1983.

The Act came into force in Pondicherry *vide* Reg. 7 of 1963 and Sch. I (w.e.f. 1-10-1963).

The Act has been repealed in its application to Bellary District by Mysore Act 14 of 1955 and in Mysore by Mysore Acts 17 of 1960 and 19 of 1973.

It has been repealed in its application to Mahakoshal, Vindhya Pradesh and Bhopal regions of Madhya Pradesh by Madhya Pradesh Act 1 of 1960 (when notified).

1. Ins. by Act 22 of 1927, sec. 2.

(ii) In the Preamble, for the words "promotion of literature, science or the fine arts", substitute the words "promotion of social welfare activities conducive to the protection and improvement of the natural environment (including forests, lakes, rivers and wild life), compassion for creatures, literature, science, sports, games or the fine arts".

[*Vide* Act 26 of 1983, sec. 2 (b) (w.r.e.f. 22-6-1983).]

Gujarat.—(i) In the long title, after the words "Literary, Scientific and Charitable Societies", insert the words "and Societies established for such other purposes."

[*Vide* Gujarat Act 17 of 1978, sec. 2 (w.e.f. 1-4-1978).]

(ii) In the Preamble, for the words "literature, science", substitute the words "literature, science and sports."

[*Vide* Gujarat Act 17 of 1978, sec. 3 (w.e.f. 1-4-1978).]

1. Societies formed by memorandum of association and registration.—Any seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in section 20 of this Act, may, by subscribing their names to a memorandum of association, and filing the same with the Registrar of Joint-Stock Companies [1][***] form themselves into a society under this Act.

STATE AMENDMENTS

Andhra Pradesh.—In section 1,—

(i) for the words "the Registrar of Joint-Stock Companies", substitute the words "the Inspector-General of Registration (hereinafter referred to as the Inspector-General)";

(ii) add the following *Explanation*, namely:—

'*Explanation.*—"Inspector-General of Registration" means the Inspector-General of Registration appointed by the State Government under section 3 of the Indian Registration Act, 1908 (XVI of 1908), and includes any officer subordinate to the Inspector-General, not below the rank of District Registrar, or sub-registrar holding the charge of the office of the District Registrar to whom the State Government may delegate the functions of the Inspector-General under this Act.'

[*Vide* The Societies Registration (Andhra Amendment) Act, 1954 (10 of 1954), sec. 2 (w.e.f. 1-10-1954), as re-enacted by Andhra Pradesh Act 6 of 1956, sec. 4 and Sch. III (w.r.e.f. 1-10-1954).]

Assam: Manipur: Tripura.—(i) In its application to the State of Assam in section I, for the words "Registrar of Joint-Stock Companies", substitute the words "Registrar of Societies appointed by the State Government".

(ii) The said Act has been extended to Manipur and Tripura with necessary modifications in the title and section 2.

[*Vide* Assam Act 7 of 1957, sec. 2 (w.e.f. 17-7-1957); G.S.Rs. 85 and 86, published in the Gazette of India, 1960, Pt. II, Sec. 3 (i).]

Bihar.—In section 1, for the words "Registrar of Joint-Stock Companies", substitute the words "Inspector-General of Registration".

[*Vide* Bihar Act 19 of 1956, sec. 2 (w.r.e.f. 21-12-1955).]

Gujarat.—Same as in Maharashtra.

[*Vide* Gujarat Adaptation of Laws Order, 1961 (w.r.e.f. 1-5-1960).]

Himachal Pradesh.—Same as in Punjab.

[*Vide* Himachal Pradesh Act 23 of 1973, sec. 2 (w.e.f. 4-12-1973).]

Kerala.—(i) In section 1, for the words "the Registrar of Joint-Stock Companies", insert the words and brackets "the Inspector-General of Registration (hereinafter in this Act referred to as the Inspector-General)".

(ii) Add the following *Explanation*, namely:—

1. The words and figures "under Act 19 of 1857" rep. by Act 16 of 1874, sec. 1 and Sch., Pt. I. *See* now the Companies Act, 1956 (1 of 1956).

'*Explanation.*—"Inspector-General of Registration" means the Inspector-General of Registration appointed by the State Government under section 3 of the Indian Registration Act, 1908 (Central Act 16 of 1908), or any of the district authorities subordinate to the Inspector-General of Registration not below the rank of the District Registrar to whom powers may be delegated in respect of this Act.'

[*Vide* Madras Act 24 of 1954, sec. 1.]

Maharashtra.—In its application to the whole of the State of Bombay, in section 1, omit the words "of Joint-Stock Companies".

[*Vide* Bombay Acts 11 of 1956, sec. 3 (w.e.f. 1-7-1956) and 76 of 1958, sec. 2 (w.e.f. 7-10-1958).]

Nagaland.—In section 1, for the words "Registrar of Joint-Stock Companies", substitute the words "Registrar of Societies appointed by the State Government".

[*Vide* Nagaland Act 14 of 1969, sec. 2 (w.e.f. 17-10-1969).]

Orissa.—(a) After the Preamble and before the existing section 1, insert the following section, namely:—

"1. *Application of Registrar of Societies.*—The State Government may, by notification, appoint a person to be called the Registrar of Societies and he shall exercise such powers and perform such duties and functions as are conferred by or under the provisions of this Act, and shall subject to such general or special order as the State Government may from time to time make, superintend the administration and carry out the provisions of this Act throughout the State of Orissa."

[*Vide* Orissa Act 21 of 1958, sec. 2 (w.e.f. 1-1-1961).]

(b) Section 1 renumbered as sub-section (1) thereof and after the section so renumbered, insert sub-sections (2) and (3)

[*Vide* Orissa Act 9 of 1979, sec. 2 (w.e.f. 3-4-1979).]

"(2) The State Government may by notification, appoint one or more Additional Registrars with such local jurisdiction as may be assigned to them by the State Government.

(3) The Additional Registrars so appointed shall, subject to the control of the Registrar of Societies, exercise such of the powers and perform such of the function of the Registrar of Societies as the State Government may authorise in that behalf."

(c) Renumber the existing section 1 as section 1A, and in the section as so renumbered, for the words "Registrar of Joint-Stock Companies", substitute the words "Registrar of Societies".

[*Vide* Orissa Act 21 of 1958, secs. 2 and 3 (w.e.f. 1-1-1961).]

Pondicherry.—In section 1, for the words "Registrar of Joint-Stock Companies", substitute the words, "Registrar of Companies".

[*Vide* Pondicherry Act 9 of 1969, sec. 3 (w.e.f. 1-1-1971).]

Punjab: Haryana: Chandigarh: Delhi.—(i) In its application to the State of Punjab as it existed immediately before the 1st November, 1956, in section 1, for the words "of Joint-Stock Companies", substitute the words "to be appointed by the State Government by notification in the Official Gazette, for carrying out the purposes of this Act."

[*Vide* Punjab Act 31 of 1957, sec. 2 and Central Act 31 of 1966, sec. 89.]

(ii) The Punjab Act has been applied to the Union territories of Delhi and Himachal Pradesh (now a State) by G.S.Rs. 83 and 84, dated 16th January, 1960, with the modifications to suit their status.

[*Vide* Gazette of India, 1960, Pt. II, Sec. 3 (i), pp. 144, 145.]

Tamil Nadu.—In section 1,—

(a) for the words "the Registrar of Joint-Stock Companies", substitute the words and brackets "the Inspector-General of Registration (hereinafter in this Act referred to as the Inspector-General)";

(b) add the following *Explanation*, namely.—

'*Explanation.*—"Inspector-General of Registration" means the Inspector-General of Registration appointed by the State Government under section 3 of the Indian Registration

Act, 1908 (Central Act XVI of 1908), or any of the district authorities subordinate to the Inspector-General of Registration not below the rank of the District Registrar to whom powers may be delegated in respect of this Act.'

[*Vide* Tamil Nadu Act 24 of 1954, sec. 2 (w.e.f. 1-9-1954).]

Uttar Pradesh.—In section 1, for the words "Registrar of Joint-Stock Companies", substitute the word "Registrar".

[*Vide* Uttar Pradesh Act 25 of 1958, sec. 2 (w.e.f. 25-8-1958).]

Section 1A

Goa, Daman and Diu.—Renumber the existing section 1 as section 1A and,—

(i) before section 1A as so renumbered, insert the following section, namely:—

'I. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "Inspector-General" means the Inspector-General of Registration appointed under section 3 of the Indian Registration Act, 1908 (Central Act 16 of 1908) and includes any of the District Authorities subordinate to the Inspector-General of Registration not below the rank of a District Registrar to whom powers may be delegated in respect of this Act;

(b) "notification" means notification published in the Official Gazette;

(c) "prescribed" means prescribed by rules made under this Act;

(d) "Registration of Societies Order" means the Registration of Societies Order, issued by the Lieutenant Governor of Goa, Daman and Diu under clause 2 of the Goa, Daman and Diu (Administration Removal of Difficulties) Order, 1962.'

(ii) in section 1A as so renumbered, for the words "the Registrar of Joint-Stock Companies", substitute the words "the Inspector-General".

[*Vide* Goa Act 6 of 1979, sec. 2 (w.e.f. 18-10-1979).]

Pondicherry.—In section 1, for the words "Registrar of Joint-Stock Companies" substitute the words, "Registrar of Companies".

[*Vide* Pondichery Act 9 of 1969, sec. 3 (w.e.f. 1-1-1971).]

Sections 1A and IB

Gujarat.—The amendments made are the same as in Maharashtra except that in sub-section (1) of section 1B, for the words "throughout the State of Maharashtra", substitute the words "throughout the State of Gujarat".

[*Vide* Gujarat Adaptation of Laws Order, 1961 (w.r.e.f. 1-5-1960).]

Maharashtra.—After section 1, insert the following sections, namely:—

'*1A. Interpretation.*—In this Act, unless there is anything repugnant to the subject or context, the expression "Registrar" means the Registrar of Societies appointed under section 1B and includes other officers appointed under the said section to exercise the powers and to perform the duties and functions of the Registrar of Societies.

1B. Registrar of Societies and Assistant Registrars.—(1) The State Government may, by notification in the Official Gazette, appoint a person, to be called the Registrar of Societies who shall exercise such powers and shall perform such duties and functions as are conferred by or under the provisions of this Act and shall, subject to such general or special orders as the State Government may make, superintend the administration and carry out the provisions of this Act throughout the State of Maharashtra.

(2) The State Government may also by like notification appoint persons to be called "Assistant Registrars of Societies" for such areas as may be specified in the notification and empower them to exercise powers and to perform duties and functions under all or such provisions of this Act as may be specified in the notification.'

[*Vide* Bombay Act 11 of 1956, sec. 2 (w.e.f. 1-7-1956) read with Bombay Act 76 of 1958, sec. 2 (w.e.f. 7-10-1958) and Act 11 of 1960.]

COMMENTS

The Societies established for charitable purpose which also includes the religious purpose can be registered under Act; *Hindu Public* v. *Rajdhani Puja Samithee*, AIR 1999 SC 964: 1999 AIR SCW 582: (1999) 2 SCC 583.

2. Memorandum of association.—The memorandum of association shall contain the following things, that is to say,—

the name of the society;

the objects of the society;

the names, addresses, and occupations of the governors, council, directors, committee, or other governing body to whom, by the rules of the society, the management of its affairs is entrusted.

A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association.

STATE AMENDMENT

Gujarat.—(i) Renumber section 2 as sub-section (1) thereof and in sub-section (1) as so renumbered, after and below the words "the name of the society", insert the following, namely:—

"the place of situation of the registered office of the society;

the addresses and occupations of the persons who have subscribed their names

to the memorandum of association under section 1;"

(ii) after sub-section (1) as so renumbered, insert the following sub-sections, namely:—

"(2) A society may, by a special resolution passed by a majority of not less than three-fifths of the total membership of the society, after its memorandum of association.

(3) The alteration of the memorandum of association shall not take effect until, and except in so far as, it is sanctioned by the Registrar who shall, before granting such sanction, satisfy himself that the alteration is not such as would have the effect of making the society ineligible for registration under this Act."

[*Vide* Gujarat Act 17 of 1978, sec. 4 (w.e.f. 1-4-1978).]

COMMENTS

Under the Act, a committee of management can be framed to manage the affairs of society and the committee is to manage the affairs of the society for a period as specified in its Rules, Bye-laws or Regulations as the case may be. Therefore, if a society runs not only a college but an institution like hospital also the committee of management, constituted under the Act will be managing the affairs of the hospital while the committee of management which has to be formed under the scheme of Administration will have to manage the affairs of the college. That necessarily means that the committee so constituted under different statutes have separate identities and separate duties to perform depending upon the nature and extent of activities of the society. Where the society in question runs only the college and that both the Committees of Management constituted under the Act and under the scheme of Administration were the same, with the expiry of the term of the committee constituted for the society would also expire because it had no affairs to manage; *Ram Sajiwan* v. *The IInd Additional District Judge, Fatehpur,* AIR 1994 (NOC) 273 (All).

The rules and regulations given in the memorandum of association form a contract amongst the members of the society and they are necessarily required to be registered under statute, these rules or regulations do not acquire any statutory character. And even if rules or bye-laws do not provide for the observance of the rules of natural justice before an expulsion, the courts will imply them in the contract which is a body of rules or bye-laws; *State Bank of India Staff Association* v. *Monindra Bhattacharyya,* AIR 1991 Cal 378: 1991 Lab IC 2120: 1991 (2) Cal LT 340.

The Registrar can refuse to register a society in case all the necessary requirements as contemplated in the Act are not fulfilled; *Shanti Sarup* v. *Radhaswami Satsang Sabha, Dayalbagh, Agra,* AIR 1969 All 248.

***3. Registration and fees.**—Upon such memorandum and certified copy being filed, the Registrar shall certify under his hand that the society is registered under this Act.

* This section was amended in its application to Berar by section 14 of the Central Provinces and Berar Vidya Mandir Act, 1939 (C.P. & B. Act 3 of 1940).

There shall be paid to the Registrar for every such registration a fee of fifty rupees, or such smaller fee as [1][the State Government] may, from time to time, direct; and all fees so paid shall be accounted for to [1][the State Government].

STATE AMENDMENTS

Andhra Pradesh.—In section 3, for the words "the Registrar" wherever they occur, substitute the words "the Inspector-General".

[*Vide* The Societies Registration (Andhra Amendment) Act, 1954 (10 of 1954), sec. 3 (w.e.f. 1-10-1954).]

Bihar.—In section 3, for the word "Registrar" wherever it occurs, substitute the words "Inspector-General of Registration."

[*Vide* Bihar Act 19 of 1956, sec. 3 (w.r.e.f. 21-12-1955).]

Goa, Daman and Diu.—In section 3,—

(i) for the words "the Registrar shall certify", substitute the words "the Inspector-General shall subject to the provisions of section 3A, certify";

(ii) for the words "the Registrar for", substitute the words "the Inspector-General for".

[*Vide* Goa Act 6 of 1979, sec. 3 (w.e.f. 16-8-1979).]

Gujarat.—(a) Same as in Maharashtra (i).

(b) In section 3, for the words "the Registrar shall certify", substitute the words, figure and letter "the Registrar shall, subject to the provisions of section 3A, certify".

[*Vide* Gujarat Act 17 of 1979, sec. 5 (w.r.e.f. 1-4-1978).]

Himachal Pradesh.—In section 3, for the full stop at the end of section, substitute a colon and add thereafter the following proviso,—

"Provided that the State Government may by notification in Official Gazette exempt any particular society or class of societies from the payment of registration fee."

[*Vide* Himachal Pradesh Act 8 of 1965, sec. 2 (w.e.f. 26-11-1965); Act 23 of 1973, sec. 3 (w.e.f. 4-12-1973).]

Kerala.—In section 3, for the words "Registrar" wherever they occur, substitute the words "the Inspector-General".

[*Vide* Madras Act 24 of 1954, sec. 2.]

Maharashtra.—(i) In section 3, insert the following proviso, namely:—

"Provided that no such fee shall be payable for the registration of a society formed with the object of running an educational institution in any area in which, the Central Provinces and Berar Vidya Mandir Act, 1939, is in force, if the objects are similar to the objects of a Vidya Mandir established under Part I of that Act."

[*Vide* Bombay Act 76 of 1958, sec. 3 (w.e.f. 7-10-1958).]

(ii) *Vidarbha region.*—In its application to the Vidarbha region of the State of Maharashtra the amendment made in section 3 by C.P. and Berar Act III of 1940 shall cease to have effect and is repealed.

[*Vide* Bombay Act 76 of 1958, sec. 2(b) (w.e.f. 7-10-1958).]

(iii) In section 3, after the words "the Registrar shall", insert the words "subject to the provisions of section 3A".

[*Vide* Maharashtra Act 11 of 1968, sec. 2 (w.e.f. 1-10-1968).]

Orissa.— In section 3, for the word "Registrar", substitute the words "Registrar of Societies."

[*Vide* Orissa Act 21 of 1958, sec. 3 (w.e.f. 1-1-1961).]

Punjab: Haryana: Chandigarh.—In its application to the State of Punjab, in section 3, add the following proviso, namely:—

1. Subs. by the A.O. 1950, for "Provincial Government". Earlier the words "Provincial Government" were substituted by the A.O. 1937, for the words "the Governor-General of India in Council".

"Provided that in the case of society which had prior to the 15th August, 1947 been registered by the Registrar, Joint-Stock Companies at Lahore, the State Government may grant exemption from payment of the whole or any part of the registration fee."

[*Vide* East Punjab Act 32 of 1948, sec. 2 (w.e.f. 12-11-1948); Central Act 31 of 1966, sec. 89.]

Tamil Nadu.—Same as in Andhra Pradesh.

[*Vide* Tamil Nadu Act 24 of 1954, sec. 2 (w.e.f. 1-9-1954).]

Uttar Pradesh.—For section 3, substitute the following section, namely:—

'3. (1) Upon such memorandum and certified copy being filed along with particulars of the address of the Society's office which shall be in registered address, by the Secretary of the Society on behalf of the persons subscribing to the memorandum, the Registrar shall certify under his hand that the society is registered under this Act. There shall be paid to the Registrar for every such registration a fee of one thousand or such smaller fee as the State Government may notify in respect of any class of societies:

Provided that the State Government may, by notification in the Official Gazette, increase from time to time the fee payable under this sub-section:

Provided that the Registrar may, in his discretion, issue public notice or issue notices to such persons as he thinks fit inviting objections, if any, against the proposed registration and consider all objections that may be received by him before registering the Society."

(2) Notwithstanding anything in sub-section (1) the Registrar shall refuse to register a society, if after giving it an opportunity of showing cause against such refusal, he is satisfied that—

(a) the name of the society is identical with that of any other society previously registered under this Act;

(b) the name of the society sought to be registered uses any of the words namely "Union", "State", "Land Mortgage", "Land Development". "Co-operative", "Gandhi", "Reserve Bank" or any words expressing or implying the sanction, approval or patronage of the Central or any State Government or any word which suggests or is calculated to suggest any connection with any local authority or any corporation or body constituted by or under any law for the time being in force or is such as is otherwise likely to deceive the public or the members of any other society previously registered under this Act;

(c) any one or more of the objects of the society sought to be registered is not an object mentioned in sections 1 and 20; or

(d) its objects are contrary to any other law for the time being in force:

Provided that the State Government may, in exceptional circumstances, for reasons to be recorded, permit any society to use the word "union" or the word "Gandhi" in its name, and thereupon, the use of that word in the name of the society shall not be ground for refusal to register or to renew the certificate of registration of such society.'

[*Vide* Uttar Pradesh Acts 52 of 1975, sec. 2 (w.e.f. 10-10-1975); 13 of 1978, sec. 3 (w.e.f. 27-2-1978); 26 of 1979, sec. 2; 23 of 1994 and 8 of 2000, sec. 3 (w.r.e.f. 25-11-1999).]

Section 3A

Assam.—After section 3, insert the following section, namely:—

'3A. *Name of Society.*—(1) No society shall be registered under a name which is identical with, or too nearly resembles, the name of any other society or any body corporate which has been previously registered or incorporated under this Act or any other law for the time being in force, as the case may be.

No society shall use in its nomenclature any of the words, namely:—

"Union", "State", "Land Mortgage", "Gandhi", "Reserve Bank" or any word expressing or implying the sanction, approval or patronage of Central or any State Government or any word which suggest or is calculated to suggest connection with any local authority or any corporation or body constituted by the Government under any law for the time being in force except when the State Government signifies its consent to the use of such words as part of the name of a society by order in writing.'

[*Vide* Assam Act 13 of 1967, sec. 2 (w.e.f. 18-8-1967).]

Goa, Daman and Diu.—After section 3, insert the following section, namely:—

"*3A. Prohibition against registration of societies with undesirable names.*—No society shall be registered by a name which, in the opinion of the Inspector-General, is undesirable, being a name which is identical with, or which in the opinion of the Inspector-General so nearly resembles the name by which any other existing society has been previously registered as to be likely to deceive the public or members of either society, or which is being used without the previous permission of the Government concerned, and which suggests or is calculated to suggest the patronage of any Government or connection with any body constituted by any Government or local authority, or which may, subject to any rules made in this behalf, be deemed to be undesirable by the Inspector-General:

Provided that no order shall be passed under section 3A unless the party against whom such order is proposed to be passed is heard on the matter."

[*Vide* Goa Act 6 of 1979, sec. 4 (w.e.f. 18-10-1979).]

Gujarat.—After section 3, insert the following section, namely:—

"*3A. Prohibition against registration of societies with undesirable names.*—No Society shall be registered by a name which, in the opinion of the Registrar, is undesirable, being a name which is identical with, or which in the opinion of the Registrar, so nearly resembles the name by which any other existing society has been previously registered, as to be likely to deceive the public or members of either society or which, without the previous permission of the Government concerned, suggests or is calculated to suggest the patronage of that Government or connection with any body constituted by that Government or any local authority, or which may, subject to any rules made in this behalf, be deemed to be undesirable by the Registrar."

[*Vide* Gujarat Act 17 of 1978, sec. 6 (w.e.f. 1-4-1978).]

Maharashtra.—After section 3, insert the following section, namely:—

"*3A. Prohibition against registration of societies with undesirable names.*—No Society shall be registered by a name which, in the opinion of the Registrar, is undesirable, being a name which is identical with, or which in the opinion of the Registrar so nearly resembles the name by which any other existing society has been previously registered, as to be likely to deceive the public or member of either society, or which without the previous permission of the Government concerned, suggests or is calculated to suggest the patronage of that Government or connection with any body constituted by that Government or any local authority, or which may, subject of any rules made in that behalf, be deemed to be undesirable by the Registrar."

[*Vide* Maharashtra Act 11 of 1968, sec. 3 (1-10-1968).]

Sections 3A and 3B

Uttar Pradesh.—After section 3, insert the following section, namely:—

"*3A. Renewal of certificate of registration.*—(1) Subject to the provision of such section (2), a certificate of registration issued under section 3 shall remain in force for a period of two years from the date of issue:

Provided that a certificate issued before the commencement of the Societies Registration (Uttar Pradesh Amendment) Act, 1984 (hereinafter in this section referred to as the said Act), shall remain in force for a period of five years from the date of such commencement on payment of the difference of the fees specified under sub-section (3) and the fees already paid.

(2) A Society registered under section 3, whether before or after the commencement of the said Act, shall on application made to the Registrar within one month of the expiration of the period referred, to in sub-section (1) and on payment of the fee specified in sub-section (3), be entitled to have its certificate of registration renewed for five years at a time:

Provided that in the case of a society registered before the commencement of the Act, the Registrar shall refuse to renew the certificate of registration, if after giving it an opportunity of showing cause against such refusal, he is satisfied that any of the grounds mentioned in sub-section (2) of section 3 exist in respect thereof.

(3) There shall be paid to the Registrar with every application for renewal of the certificate of registration—

(a) a fee equal to the registration fee payable under section 3 or rupees two hundred, whichever is less, if such application is filed within the period specified in sub-section (2):

Provided that the State Government may, by notification in the Official Gazette, increase from time to time the fee payable under this clause subject to the condition that the fee so increased shall not exceed the registration fee payable under section 3;

(b) an additional fee of forty rupees or such higher fee not exceeding one-fifth of the fee payable under clause (a) as may be notified by the State Government, if such application is filed within one month of the date of expiration of the period specified in sub-section (2); and

(c) an additional fee at the rate of twenty rupees per month or part thereof, or such higher additional fee per month not exceeding half of the additional fee payable under clause (b) as may be notified by the State Government, if such application is filed beyond one month of the expiration of the period specified in sub-section (2).

(4) Every application for renewal of the certificate shall be accompanied by a list of members of the managing body elected after the registration of the society or after the renewal of certificate of registration and also the certificate sought to be renewed unless dispensed with by the Registrar on the ground of its loss or destruction or other sufficient cause.

(5) A society which fails to get its certificate of registration renewed in accordance with this section with one year from the expiration of the period for which the certificate was operative shall become an unregistered society:

Provided that the Registrar may, for sufficient cause, allow an application for renewal more than one year after the expiration of the period for which the certificate was operative on payment of a fee of four hundred rupees or such higher fee not exceeding ten times of the additional fee payable under clause (b) of sub-section (3) as may be notified by the State Government from time to time.

(6) Where a certificate of registration is renewed in accordance with sub-section (2) or sub-section (5) such renewal shall operate from the date of expiration of the period for which the certificate was operative."

[*Vide* Uttar Pradesh Acts 52 of 1975, sec. 3 (w.e.f. 10-10-1975); 13 of 1978, sec. 3 (w.r.e.f 27-2-1978); 11 of 1984, sec. 3 (w.e.f. 30-11-1984), 23 of 1994 and 8 of 2000, sec. 3 (w.r.e.f. 25-11-1999).]

After section 3A, insert the following section, namely:—

"*3B. Reference to the State Government.*—If any question arises whether any Society is entitled to get itself registered in accordance with section 3 or to get its certificate of registration renewed in accordance with section 3A the matter shall be referred to the State Government and the decision of the State Government thereon shall be final."

[*Vide* Uttar Pradesh Act 26 of 1979, sec. 3 (w.e.f. 16-7-1979).]

COMMENTS

A Society registered under the Act has been held to have the presumption of being a 'person' within the purview of section 236 of the Indian Succession Act, 1925; *Ganga Sahai* v. *Bharat Bhan*, AIR 1950 All 480: 51 Cr LJ 353: ILR (1952) 2 All 677.

A Society whose primary object is religious cannot be registered under this Act; *Md. Yunus* v. *Inspector General of Registration*, AIR 1980 Pat 138: 1980 BLJR 212: 1980 Pat LJR 119.

4. Annual list of managing body to be filed.—Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the Society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar of Joint-Stock Companies, of the names, addresses and occupations of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society.

STATE AMENDMENTS

Andhra Pradesh.—In section 4, for the words "the Registrar of Joint-Stock Companies", substitute the words "the Inspector-General of Registration."

[*Vide* the Societies Registration Andhra Amendment Act, 1954 (Act 10 1954), sec. 3 (w.e.f. 1-10-1954).]

Assam: Manipur: Tripura.—In section 4, for the words "Registrar of Joint-Stock Companies", substitute "Registrar of Societies".

[*Vide* Assam Act 7 of 1957, sec. 2(ii) (w.e.f. 17-7-1957) and G.S.Rs. 85 and 86 of 1960, published in the Gazette of India, 1960, Pt. II, Sec. 3(i), pp. 145, 146.]

Bihar.—In section 4, for the words "Registrar of Joint-Stock Companies", substitute the words, "Inspector-General of Registration."

[*Vide* Bihar Act 19 of 1956, sec. 3 (w.r.e.f. 21-12-1955).]

Goa, Daman and Diu.—In section 4, for the words "the Registrar of Joint-Stock Companies", substitute the words "the Inspector-General".

[*Vide* Goa Act 6 of 1979, sec. 5 (w.e.f. 18-10-1979).]

Gujarat.—Same as in Maharashtra.

Himachal Pradesh.—Same as in Punjab.

[*Vide* Himachal Pradesh Act 23 of 1973, sec. 4 (w.e.f. 4-12-1973).]

Kerala.—In section 4, for the words "the Registrar of Joint-Stock Companies", substitute the words "Inspector-General".

[*Vide* Madras Act, 24 of 1954, sec. 3.]

Maharashtra.—In its application to the whole of the State of Bombay, in section 4, omit the words "of Joint-Stock Companies."

[*Vide* Bombay Act 11 of 1956, sec. 3 (w.e.f. 1-7-1956) and Act 76 of 1958, sec. 2 (w.e.f. 7-10-1958).]

Nagaland.—In section 4, for the words "Registrar of Joint-Stock Companies", substitute the words "Registrar of Societies".

[*Vide* Nagaland Act, 14 of 1969 (w.e.f. 17-10-1969).]

Orissa.—In section 4, for the words "Registrar of Joint-Stock Companies", substitute the words "Registrar of Societies".

[*Vide* Orissa Act 21 of 1958, sec. 3 (w.e.f. 1-1-1961).]

Punjab: Haryana: Chandigarh: Delhi: Himachal Pradesh.—In section 4.—

(i) add the following words, namely:—

"If a society makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees."

[*Vide* East Punjab Act 6 of 1949, sec. 2 (w.e.f. 8-2-1949); Central Act 31 of 1966, sec. 89.]

(ii) Omit the words "of Joint-Stock Companies".

[*Vide* Punjab Act 31 of 1957, sec. 3; Chandigarh Act 31 of 1966 and G.S.Rs. 83 and 84 of 1960, published in the Gazette of India, 1960, Pt. II, Sec. 3(i), pp. 144, 145.]

Tamil Nadu.—Same as in Andhra Pradesh.

[*Vide* Tamil Nadu Act 24 of 1954, sec. 2(iv) (w.e.f. 1-9-1954).]

Uttar Pradesh.—(i) In section 4, for the words "Registrar of Joint-Stock Companies", substitute the word "Registrar".

[*Vide* Uttar Pradesh Act 25 of 1958, sec. 2 (w.e.f. 25-8-1958).]

(ii) Renumber section 4 as sub-section (1) thereof, and after sub-section (1) as renumbered, insert the following sub-section namely:—

"(2) Together with list mentioned in sub-section (1) there shall be sent to the Registrar a copy of the memorandum of association including any alteration, extension or abridgement of purposes made under section 12, and of the rules of the society corrected up to date and

certified by not less than three of the members of the said governing body to be a correct copy and also a copy of the balance-sheet for the proceeding year of account."

[*Vide* Uttar Pradesh Act 52 of 1975, sec. 4 (w.e.f. 10-10-1975).]

(ii) in sub-section (1), insert the following proviso, namely:—

"Provided that if the managing body is elected after the last submission of the list, the counter signature of the old members, shall, as far as possible, be obtained on the list. If the old office-bearers do not counter-sign the list, the Registrar may, in his discretion, issue a public notice or notice to such persons as he thinks fit inviting objections within a specified period and shall decide all objections received within the said period."

[*Vide* Uttar Pradesh Act 11 of 1984, sec. 4 (w.e.f. 30-4-1984).]

Section 4A

Bihar.—Section 4A, inserted after section 4, is the same as in Assam, subject to the following modifications, namely:—

(a) for the words "Registrar of Societies" wherever they occur, substitute the words "Inspector-General of Registration";

(b) for the words "showing changes" substitute the words "showing all changes";

(c) in sub-section (2), for the words "than three members", substitute the words "than three of the members" and for "alterations" occurring at the end, substitute the word "alteration".

[*Vide* Bihar Act 4 of 1951, sec. 2 (w.e.f. 7-3-1951); Act 19 of 1956, sec. 5 (w.r.e.f. 21-12-1955).]

Goa, Daman and Diu.—After section 4, insert the following section, namely:—

"4A. *Power of Inspector-General to call for Information or returns from governing body of society and provisions relating thereto.*—(1) The Inspector-General may serve or cause to be served, on the governing body entrusted with the management of the affairs of any society registered under this Act a notice requiring it to furnish in such manner as may be prescribed, information or returns relating to person employed by the society, their conditions of employment (including their emoluments, any contributions, concessions or other benefits and amenities provided for employees) and such other matters relating thereto, as may be prescribed.

(2) The form in which such information or returns shall be furnished, the particulars which they shall contain and the intervals (if any) in which such information or returns shall be furnished, shall be such as may be prescribed.

(3) The notice referred to in sub-section (1) may be served by post.

(4) No information or returns collected for the purposes of this section, shall without the previous consent in writing of the society in relation to which the information or returns was given or made be published in such manner as would enable any particulars to be identified as referring to a particular society.

(5) Except for the purposes of a prosecution under section 11A or under the Indian Penal Code (Central Act 45 of 1860), no person other than the Inspector-General or any person duly specified by him in this behalf, shall be permitted to see any information or returns furnished as aforesaid.

(6) No suit or other legal proceeding shall lie against the Inspector-General or any person acting under the authority of the Inspector-General in respect of anything in good faith done or intended to be done in pursuance of this section."

[*Vide* Goa Act 6 of 1979, sec. 6 (w.e.f. 18-10-1979).]

Maharashtra.—After section 4, insert the following section, namely:—

"4A. *Power of Registrar to call for information or return from governing body of society and provisions relating thereto.*—(1) The registrar may serve or cause to be served, on the governing body entrusted with the management of the affairs of any society registered under this Act, a notice requiring to furnish in such manner as may be prescribed by rules, information or returns relating to persons employed by the society, their conditions of employment (including their emoluments, any contribution, concessions or other benefits and amenities provided for employees) and matters relating thereto, as may be prescribed by rules.

(2) The forms in which such information or return should be furnished, the particulars which they should contain and the intervals (if any) in which such information or returns should be furnished, shall be such as may be prescribed by such rules.

(3) The notice referred to in sub-section (1) may be served by post.

(4) No information or return collected for the purposes of this section shall, without the previous consent in writing of the society in relation to which the information or return was given or made be published in such manner as would enable any particulars to be identified as referring to a particular society.

(5) Except for the purposes of a prosecution under section 11A or under the Indian Penal Code, no person other than the Registrar or any person duly specified by him in this behalf, shall be permitted to see any information or return furnished as aforesaid.

(6) No suit or other legal proceedings shall lie against the Registrar or any person acting under the authority of the Registrar in respect of anything in good faith done or intended to be done in pursuance of this section."

[*Vide* Maharashtra Act 11 of 1968, sec. 4 (1-1-1968).]

Pondicherry.—(i) In section 4, for the words "Registrar of Joint-Stock Companies", substitute the words "Registrar of Companies".

(ii) After section 4, insert the following section, namely:—

"4A. *Filing of Annual Accounts.*—(1) A copy of the balance-sheet together with a statement of receipts and expenditure duly certified by at least two members of the governing body and audited by a person who has been granted a certificate by the Government under the Chartered Accountants Act, 1949 or by a special auditor approved by the Government shall also be filed with the Registrar of Companies, at the same time as required by section 4.

(2) A filing fee of Rs. 3 each shall be paid along with the list and the balance-sheet and copy of alteration to rules respectively referred to in the section 4 and sub-sections (1) and (6) of section 4A. The said fee may be paid either by cash or crediting the amount to Government Treasury and by attaching the duplicate challan to the documents.

(3) All societies registered under this Act shall hold every year a general meeting at which the report of the management of the institution for the previous year, together with the audited copy of the balance-sheet, receipts and expenditure statement and the auditor's report shall be submitted for approval.

(4) A special meeting may be convened at any time on requisition of the President or the Chairman of the Executive Committee, if any, or on the requisition of not less than three members of the Executive Committee or seven members of the general body of the society, who shall state in writing the business for which they wish the meeting to be convened. The Secretary shall convene a meeting of the society before the lapse at ten days from the date of receipt of the requisition.

(5) If a member has no registered address in the Union Territory and has not furnished to the society an address within the Union Territory for serving notice to him, a notice advertised in two newspapers (one in English and the other in any of the vernacular languages) circulating in the neighbourhood of registered office of the society shall be deemed to be duly given to him on the day on which the advertisement appears.

(6) A copy of every alteration made in the rules and regulations of the society, certified to be a correct copy in the manner prescribed as aforesaid shall be sent to the Registrar within fifteen days of making of such alterations.

(7) If the society makes default in complying with the requirements of sections 4 and 4A, it shall be liable to a fine not exceeding fifty rupees."

[*Vide* Pondicherry Act 9 of 1969, sec. 4 (w.e.f. 1-1-1970).]

Uttar Pradesh.—After section 4, insert the following section, namely:—

"4A. *Changes etc. in rules to be intimated to Registrar.*—A copy of every change made in rules of the society and intimation of every change of address of the society, certified by not less than three of the members of the governing body shall be sent to the Registrar within thirty days of the change."

[*Vide* Uttar Pradesh Act 52 of 1975, sec. 5 (w.e.f. 10-10-1975).]

Sections 4A and 4B

Assam.—(i) After section 4, insert the following sections, namely:—

"4A. *Changes in managing body and rules to be filed.*—(1) Together with the list mentioned in section 4, there shall be sent to the Registrar of Societies a statement showing changes during the year to which the list relates in the personnel of the governors, council, directors, committee or other governing body to whom the management of the affairs of the Society is entrusted and also a copy of the rules of the society corrected up-to-date and certified to be a correct copy by not less than three of the members of the governing body.

(2) A copy of ever alteration made in the rules of the society, certified to be a correct copy by not less than three members of the governing body, shall be sent to the Registrar of Societies within fifteen days of the making of such alteration."

[*Vide* Assam Act 11 of 1952, sec. 2 (w.e.f. 15-10-1952); Act 7 of 1957, sec. 2(ii) (w.e.f. 17-7-1957).]

(ii) After section 4A, insert the following section, namely:—

"4B. *Balance-sheet and auditor's report to be forwarded to Registrar.*—(1) Within thirty days after the holding of every annual general meeting there shall be filed with the Registrar of Societies a copy each of the balance-sheet and auditor's report certified by the auditor under sub-section (2) of section 5A.

(2) If the President, Secretary or any other person authorised in this behalf by a resolution of the governing body of the society fails to comply with the provisions of sub-section (1) he shall be punishable with fine which may extend to five hundred rupees."

[*Vide* Assam Act 13 of 1967, sec. 3 (w.e.f. 18-8-1967).]

Gujarat.—After section 4, insert the following sections, namely:—

"4A. *Changes in managing body and rules to be filed.*—(1) Together with the list mentioned in section 4, there shall be sent to the Registrar a statement showing changes during the year to which the list relates in the personnel, of Governors, Councils, Directors, Committee or other governing body to whom the management of the affairs of the society is entrusted and also a copy of the rules of the society corrected up-to-date and certified to be correct copy by not less than three of the members of the governing body.

(2) A copy of every alteration made in rules of the society certified to be a correct copy by not less than three members of the governing body shall be sent to the Registrar within thirty days of the making of such alteration."

[*Vide* Gujarat Act 14 of 1965, sec. 2 (w.e.f. 1-5-1966).]

After section 4A, insert the following section, nemaly.—

'4B. *Power of Registrar to call for information or returns from governing body of society and provisions relating thereto.*—(1) The Registrar may serve, or cause to be served, on the authorised officer of any society registered under this Act, a notice requiring him to furnish in such manner as may be prescribed by rules, information or return relating to persons employed by the society, their conditions of employment (including their emoluments, any contributions, concessions or other benefits and amenities provided for employees and matters relating thereto, as may be prescribed by such rules and the authorised officer of the society on whom such notice is served, shall be bound to comply with the requirement stated therein.

(2) The form in which such information or returns shall be furnished, the particulars which they shall contain and the intervals (if any) at which such information or returns shall be furnished shall be such as may be prescribed by rules.

(3) The notice referred to in sub-section (1) may be served by post.

(4) No information or return collected for the purposes of this section shall, without the previous consent in writing of the society in relation to which the information or return was given or made, be published in such manner as would enable any particulars to be identified as referring to a particular society.

(5) Except for the purposes of a prosecution for an offence under section 11A or under the Indian Penal Code, no person other than the Registrar or any person duly authorised by him in this behalf, shall be permitted to see or to have access to any information or return furnished as aforesaid.

(6) No suit or other legal proceeding shall lie against the Registrar or any person acting under the authority of the Registrar in respect of anything in good faith done or intended to be done in pursuance of this section.

Explanation.—In this section "authorised officer", in relation to any society, means such officer or employee of the society as may be authorised for the purposes of this section, by the rules and regulation of the society and in default of such authorisation by rules and regulation, by a resolution in writing by the society, and shall include,—

(i) where any officer or employee so authorised is unable to perform his duties by reason of absence due to leave or any other cause, or any other officer or employee of the society who is in charge of the duties of the officer or employee so authorised during his absence, and

(ii) where no such officer or employee has been so authorised any member of the governing body of the society.'

[*Vide* Gujarat Act 17 of 1978, sec. 7 (w.e.f. 1-4-1978).]

Sections 4A, 4B and 4C

Orissa.—After section 4, insert the following sections, namely:—

"*4A. Changes in the list mentioned in section 4 and rules to be filed.*—(1) Without prejudice to the provisions of section 4 and change in personnel on the list filed under said section occurring during the year to which such list relates shall be intimated to the Registrar of Societies within two months of the making of such changes.

(2) A copy of every alteration made in the rules and regulations of the society, certified to be a correct copy by not less than three of the Governors, Directors or members of governing body, as the case may be, shall be sent to the Registrar of Societies within two months of such alteration.

4B. Persons by whom lists, etc., are to be sent.—It shall be the duty—

(a) of the Chairman or, as the case may be, the President, the Secretary or any other person authorised in that behalf by the rules and regulations of the society or by a resolution of the governing body of the society; or

(b) of the Chairman, or as the case may be, the President of the governing body of the society where there is no such authorisation,

to file the list mentioned in section 4, or to send the intimation, or as the case may be, the copy mentioned in section 4A to the Registrar or Societies.

4C. Offence.—(1) If any person who is required so to do under the preceding section fails without reasonable cause to comply with the provisions thereof, he shall, on conviction, be punishable with fine which may extend to one hundred rupees.

(2) If any person wilfully makes or causes to be made any false entry or alteration in, or any omission from, the list filed under section 4 or any statement or copy of rules and regulations sent to the Registrar of Societies under section 4A, he shall, on conviction, be punishable with fine which may extend to five hundred rupees."

[*Vide* Orissa Act 8 of 1969, sec. 2 (w.e.f. 15-4-1969).]

COMMENTS

The Assistant Registrar had no jurisdiction to decide the present dispute in exercise of powers under section 4 of the Societies Registration Act as the dispute has not arisen in the context of the submission of the annual list of the managing body but the election of the office-bearers of the society and there is a claim of existence of two rival executive bodies of the society and this has to be decided by section 25 of the Societies Registration Act; *All-Muslim Welfare Society* v. *Assistant Registrar, Firms, Societies and Chits, Varanasi*, AIR 1992 All 43: 1992 All LJ 334: 1991 (2) UPLBEC 1046.

Under section 4, the Registrar deals with only such matters as may arise in the context of submission of the annual list of the managing body. Section 4 of the Societies Registration Act is not applicable to the present case as the dispute has not arisen in the context of the submission of the annual list of the managing body but with the election of the office-bearers of the society; *All India Council* v. *Assistant Registrar, Firms, Societies and Chits, Varanasi Region, Varanasi*, AIR 1988 All 236: 1988 All WC 1154: 1988 Ed Cas 210.

5. Property of society how vested.—The property, movable and immovable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society for their proper title.

STATE AMENDMENTS

Bihar.—In section 5, for the words "civil and criminal" the words "civil, criminal and revenue" shall be, and shall be deemed always to have been, substituted.

[*Vide* Bihar Act 2 of 1960, sec. 2 (w.e.f. 8-2-1960).]

Section 5A

Assam.—After section 5, insert the following new section, namely:—

"*5A. Books of account and audit.*—(1) Every society shall keep at its registered office proper books of account in which shall be entered accurately—

(a) all sums of money received and the source thereof and all sums of money expended by the society and the object or purpose for which such sums are expended,

(b) the assets and liabilities of the society.

(2) Every society shall have its account audited once every year by a duly qualified auditor and have a balance-sheet prepared by him. The auditor shall also submit a report showing the exact state of the financial affairs of the society. Three copies of the balance-sheet and the auditor's report shall be certified by the auditor.

Explanation.—A duly qualified auditor means a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 or a person approved by the Registrar of Societies in this behalf.

(3) If the President, Secretary or any other person authorised in this behalf by a resolution of the governing body of the society fails to comply with the provisions of sub-section (1) or sub-section (2) he shall be punishable with fine which may extend to twenty rupees for every day after the detection of the default during which the default continues."

[*Vide* Assam Act 13 of 1967, sec. 4 (w.e.f. 18-8-1967).]

Uttar Pradesh.—After section 5, insert the following section, namely:—

'*5A. Restriction on transfer of property.*—(1) Notwithstanding anything contained in any law, contract or other instrument to the contrary, it shall not be lawful for the governing body of a society registered under this Act or any of its members to transfer, without the previous approval of the Court, any immovable property belonging to such society.

(2) Every transfer made in contravention of sub-section (1) shall be void.

Explanation I.—The word "Court" shall have the meaning assigned to it in section 13.

Explanation II.—The expression "transfer" shall for the purposes of this section mean—

(a) a mortgage, charge, sale gift, of exchange;

(b) lease for a term exceeding five years: or

(c) irrevocable licence.'

[*Vide* Uttar Pradesh Act 26 of 1979, sec. 2 (w.e.f. 16-7-1979).]

COMMENTS

The right of the members over the property of a registered society is not personal but merely of management over it in the capacity analogus to that of trustees; *Pamulapati Buchinaidu College Committee, Nidubrolu* v. *Government of Andhra Pradesh*, AIR 1958 AP 773: (1958) 2 Andh WR 580.

6. Suits by and against societies.—Every society registered under this Act may sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rules and regulations of the society and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion:

Provided that it shall be competent for any person having a claim, or demand against the society, to sue the president or chairman, or principal secretary or the trustees thereof, if on application to the governing body some other officer or person be not nominated to be the defendant.

COMMENTS

A registered society is not a corporation but is like a Joint-Stock Company or a Club; *Sakharkhedra Education Society* v. *State of Maharashtra*, AIR 1968 Bom 91: 69 Bom LR 690: ILR 1968 Bom 77.

7. **Suits not to abate.**—No suit or proceeding in any Civil Court shall abate or discontinue by reason of the person, by or against whom such suit or proceeding shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued or been sued, but the same suit or proceeding shall be continued in the name of or against the successor of such person.

8. **Enforcement of judgment against society.**—If a judgment shall be recovered against the person or officer named on behalf of the society, such judgment shall not be put in force against the property, movable or immovable, or against the body of such person or officer, but against the property of the society.

The application for execution shall set forth the judgment, the fact of the party against whom it shall have been recovered having sued or having been sued, as the case may be, on behalf of the society only, and shall require to have the judgment enforced against the property of the society.

STATE AMENDMENT

Bihar.—In section 8, after the word "judgment" wherever it occurs, insert the words "or decree".

[*Vide* Bihar Act 2 of 1960, sec. 3 (w.e.f. 3-2-1960).]

COMMENTS

A judgment or decree is not enforceable against the individual member constituting a registered society in as much as the society has a legal entity separate from its members; *K.C. Thomas* v. *R.L. Gadeock*, AIR 1970 Pat 163: 1969 Pat LJR 438: 1969 BLJR 942.

9. **Recovery of penalty accruing under bye-law.**—Whenever by any bye-law duly made in accordance with the rules and regulations of the society, or, if the rules do not provide for the making of bye-laws, by any bye-law made at a general meeting of the members of the society convened for the purpose (for the making of which the concurrent votes of three-fifths of the members present at such meeting shall be necessary), any pecuniary penalty is imposed for the breach of any rule or bye-law of the society, such penalty, when accrued, may be recovered in any Court having jurisdiction where the defendant shall reside, or the society shall be situated, as the governing body thereof shall deem expedient.

10. **Members liable to be sued as strangers.**—Any member who may be in arrear of a subscription which according to the rules of the society he is bound to pay, or who shall possess himself of or detain any property of the society in a manner or for a time contrary to such rules, or shall injure or destroy any property of the society, may be sued for such arrear or for the damage accruing from such detention, injury, or destruction of the property in the manner hereinbefore provided.

Recovery by successful defendant of costs adjudged.—But if the defendant shall be successful in any suit or other proceedings brought against him at the instance of the society, and shall be adjudged to recover his costs, he may elect to proceed to recover the same from the officer in whose name the suit shall be brought, or from the society, and in the latter case shall have process against the property of the said society in the manner above described.

COMMENTS

A society can sue against its members who do not vacate the defaults in arrears of subscription and wrongfully possess the property of the society just as it would have proceeded against strangers; *Ganga Sahai* v. *Bharat Bhan*, AIR 1950 All 480: 51 Cr LJ 353: ILR (1952) 2 All 677.

11. Members guilty of offences punishable as strangers.—Any member of the society who shall steal, purloin, or embezzle any money or other property, or wilfully and maliciously destroy or injure any property of such society, or shall forge any deed, bond, security for money, receipt, or other instrument, whereby the funds of the society may be exposed to loss, shall be subject to the same prosecution, and, if convicted, shall be liable to be punished in like manner, as any person not a member would be subject and liable to in respect of the like offence.

STATE AMENDMENTS

Sections 11A, 11B and 11C

Goa, Daman and Diu.—After section 11, insert the following sections, namely:—

"*11A. Penalty for contravening section 4A.*—If the governing body entrusted with the management of the affairs of any society registered under this Act required to furnish any information or returns—

(i) wilfully refuses or without lawful excuse neglects to furnish such information or returns as may be required under section 4A; or

(ii) wilfully furnishes or causes to be furnished any information or returns which it knows to be false; or

(iii) refuses to answer or wilfully gives a false answer to any question necessary for obtaining any information required to be furnished under section 4A,

such governing body shall, for each such offence, on conviction, be punished with fine which may extend to fifty rupees.

11B. Penalty for improper disclosure or information or return.—If the Inspector-General or any person duly authorised by him in connection with the collection of any information or returns under this Act wilfully discloses any information or contents of any returns given or made under this Act otherwise than in the execution of his duties under this Act or for the purpose of prosecution, of an offence under this Act or the Indian Penal Code (Central Act 45 of 1860), he shall, on conviction, be punished for such offence with fine which may extend to two hundred rupees.

11C. Cognizance of offences.—No prosecution for an offence under section 11A shall be instituted, except by, or with the sanction of, the Inspector-General, and no prosecution for an offence under section 11B shall be instituted except by, or with the consent of, the Government."

[*Vide* Goa, Act 6 of 1979, sec. 7 (w.e.f. 18-10-1979).]

Gujarat.—After section 11, insert the following sections, namely:—

"*11A. Penalty for contravening section 4B.*—If any authorised officer of a society who is required to furnish any information or return under sub-section (1) of section 4B.—

(i) wilfully refuses or without lawful excuse neglects to furnish such information or return as may be required under section 4B; or

(ii) wilfully furnishes or causes to be furnished any information or return which he knows to be false; or

(iii) refuses to answer or wilfully gives a false answer to any question necessary for obtaining any information required to be furnished under section 4B.

such authorised officer shall, on conviction, be punished for each such offence with fine which may extend to two hundred rupees.

11B. Penalty for improper disclosure of information or return.—If the Registrar or any person duly authorised by him in connection with the collection of any information or returns under this Act wilfully discloses any information or the contents of any return given or made under this Act otherwise than in the execution of his duties under this Act or under the Indian Penal

Code, he shall, on conviction, be punished for such offence with fine which may extend to two hundred rupees.

11C. Sanction for prosecution.—No prosecution for an offence under section 11A shall be instituted, except by, or with the sanction of, the Registrar, and no prosecution for an offence under section 11B shall be instituted except by, or with the consent of, the State Government."

[*Vide* Gujarat Act 17 of 1978, sec. 8 (w.e.f. 1-4-1978).]

Maharashtra.—After section 11, insert the following sections, namely:—

"*11A. Penalty for contravening section 4A*—If the governing body entrusted with the management of the affairs of any society registered under this Act required to furnish any information or return—

(i) wilfully refuses or without lawful excuse neglects to furnish such information or return as may be required under section 4A; or

(ii) wilfully furnishes or causes to be furnished any information or return which it knows to be false; or

(iii) refuses to answer or wilfully gives a false answer to any question necessary for obtaining any information required to be furnished under section 4A,

such governing body shall, for each offence on conviction, be punished with fine, which may extend to fifty rupees.

11B. Penalty for improper disclosure of information or return.—If the Registrar or any person duly authorised by him in connection with the collection of any information or returns under this Act wilfully discloses any information or the contents of any returns given or made under this Act otherwise than in the execution of his duties under this Act or for the purposes of the prosecution of an offence under this Act or the Indian Penal Code, he shall, on conviction, be punished for such offence with fine which may extend to two hundred rupees.

11C. Cognizance of offences.—No prosecution for an offence under section 11A shall be instituted, except by or with the sanction of the Registrar, and no prosecution for an offence under section 11B shall be instituted except by, or with the consent of, the State Government."

[*Vide* Maharashtra Act 11 of 1968, sec. 5 (w.e.f. 1-10-1968).]

12. Societies enabled to alter, extend or abridge their purposes.—Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend, or abridge such purpose to or for other purposes within the meaning of this Act, or to amalgamate such society either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in a written or printed report, and may convene a special meeting for the consideration thereof according to the regulations of the society;

but no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof, nor unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.

STATE AMENDMENTS

Delhi.—In section 12, after the words "other society", insert the words "or whenever the governing body of any society registered under this Act decides to change the name of the society".

[*Vide* Delhi Act 9 of 1954, sec. 2 (w.e.f. 30-10-1954).]

Goa, Daman and Diu.—In section 12, after the words "either wholly or partially with any other society", insert the words "or to change the name of the society".

[*Vide* Goa Act 6 1979, sec. 8 (w.e.f. 18-10-1979).]

Gujarat.—Same as in Maharashtra.

Himachal Pradesh.—In section 12, after the words "other society", insert the words "or whenever the governing body of any society registered under this Act decides to change the name of the society".

[*Vide* H.P. Act 23 of 1973, sec. 5 (w.e.f. 4-12-1973).]

Maharashtra.—In its application to the State of Bombay, in section 12, after the words "other society", insert the words "or whenever the governing body of any society registered under this Act decides to change the name of the society".

[*Vide* Bombay Act 53 of 1948, sec. 2 (w.e.f. 5-12-1948) and Bombay Act 76 of 1958, sec. 2 (w.e.f. 7-10-1958).]

Orissa.—In section 12,—

(i) in first paragraph, after the words "any other society", insert the words "or whenever the governing body of any such society decides to change the name of the society"; and

(ii) after second paragraph, insert the following proviso, namely:—

"Provided that no proposition for amalgamation shall be carried into effect unless it has been considered, agreed to and confirmed by all concerned societies in the manner prescribed in this section."

[*Vide* Orissa Act 8 of 1969, sec. 3 (w.e.f. 15-4-1969).]

Punjab: Haryana: Chandigarh.—Same as in Maharashtra.

[*Vide* East Punjab Act 6 of 1949, sec. 3 (w.e.f. 8-4-1949); Central Act 31 of 1966, sec. 89).]

West Bengal.—Same as in Maharashtra.

[*Vide* West Bengal Act 16 of 1950, sec. 3 (w.e.f. 30-3-1950).]

Sections 12A to 12C

Assam.—After section 12, insert the following new sections, namely:—

"*12A. Change of name.*—Any society registered under this Act may, with the consent of not less than two-thirds of the total number of its members by a resolution at a general meeting convened for the purpose of subject to the provisions of section 12B, change its name.

12B. Notice of change of name.—(1) Notice in writing of every change of name, signed by the Secretary and by seven members of the society changing its name, shall be sent to the Registrar.

(2) If the proposed name is identical with that by which any other existing society has been registered or, in the opinion of the Registrar, nearly resembles such name as to be likely to deceive the public, the Registrar shall refuse to register the change of name.

(3) Save as provided in sub-section (2), the Registrar shall, if he is satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name and the change of name shall have effect from the date of such registration.

12C. Effects of change of name.—The change in the name of a society registered under this Act shall not affect any right or obligations of the society or render defective any legal proceeding by or against the society, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name."

[*Vide* Assam Act 14 of 1943, sec. 2.]

Sections 12A and 12B

Bihar.—After section 12, insert the following sections, namely:—

"*12A. Change of name.*—Any number not less than three-fifths of the members of any society registered under section 3 may, subject to the provisions of section 12B, change its name.

12B. Notice of change in name.—(1) Notice in writing of every change of name signed by the Secretary and any seven members of the society changing its name shall be sent to the Registrar.

(2) If the proposed name is identical with that by which any other existing society has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be

likely to deceive the public or the members of either society, the Registrar shall refuse to register the change of name.

(3) Save as provided in sub-section (2) the Registrar shall if he is satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name and the change of name shall have effect from the date of such registration."

[*Vide* Bihar Act 30 of 1948, sec. 2 (w.e.f. 21-7-1948).]

Delhi.—After section 12, insert following sections, namely:—

"*12A. Registration of change of name.*—(1) Where a proposition for change of name has been agreed to and confirmed in the manner prescribed by section 12, a copy of the proposition so agreed to and confirmed shall be forwarded to the Registrar for registering the change of name. If the proposed name is identical with that by which any other existing society has been registered, or in the opinion of the Registrar so nearly resembles such name as to be likely to deceive the public or the members of either society, the Registrar shall refuse to register the change the name.

(2) Save as provided in sub-section (1), the Registrar shall, if he is satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name and issue a certificate of registration altered to meet the circumstances of the case. On the issue of such a certificate the change of name shall be complete.

(3) The Registrar shall charge for any copy of a certificate issued under sub-section (2) a fee of rupee one or such large fee and exceeding rupees five as the State Government may, from time to time, direct; and all fees so paid shall form part of the Consolidated Fund of India.

12B. Effect of Change.—The change in the name of a society shall not affect any rights or obligations of the society or render defective any legal proceeding by or against the society; and any legal proceeding which might have been continued or commenced by or against it by the former name may be continued or commenced by or against it by the new name.

12C. Registration of change of names effected before coming into force of Delhi Act 9 of 1954.—If any society registered under this Act has, before the date of the coming into force of the Societies Registration (Delhi Amendment) Act, 1954, intimated to the Registrar the change of its name and if the Registrar has recorded such change, the Registrar may, notwithstanding anything contained in this Act, on an application made by the society in this behalf and on payment of a fee as provided for in sub-section (3) of section 12A, register the change of such name and issue a certificate to the society under sub-section (2) of the said section 12A. On the issue of such certificate the change shall be deemed to be complete from the date on which such change was recorded by the Registrar, notwithstanding the fact that the society had not followed the procedure prescribed in sections 12 and 12A."

[*Vide* Delhi Act 9 of 1954, sec. 3 (w.e.f. 30-10-1954).]

Sections 12A to 12D

Goa Daman and Diu.—After section 12, insert the following sections, namely:—

"*12A. Registration of change of name.*—(1) Where a proposition for change of name of a society has been agreed to and confirmed in the manner specified in section 12, a copy of the proposition so agreed to and confirmed shall be forwarded to the Inspector-General for registering the change of name.

(2) If the proposed change of name is in his opinion undesirable for any of the reasons mentioned in section 3A, the Inspector-General shall refuse to register the change of name.

(3) Save as provided in sub-section (2), the Inspector-General shall, if he is satisfied that the provisions of the Act in respect of the change of name have been complied with, register the change of name and issue a certificate of registration altered to meet the circumstances of the case and on the issue of such a certificate, the change of name shall be complete.

(4) The Inspector-General shall charge for any copy of a certificate issued under sub-section (3), a fee of one rupee and all fees so paid shall be accounted for to the Government.

(5) If, through inadvertence or otherwise, a society is registered by a name which should not have been registered (due regard being had to the provisions of section 3A), the Inspector-General, may, after hearing the party concerned, direct the society to change the name, and the

society shall change its name within a period of three months from the date of such direction or such longer period as the Inspector-General may think fit to allow, in accordance with the provisions of this Act.

12B. Effect of change of name.—The change of name of society shall not affect any right or obligation of the society or render defective any legal proceeding by or against the society, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

12C. Maintenance of accounts and their balancing and accounting.—(1) Every governing body entrusted with the management of the affairs of a society registered under this Act shall keep regular accounts.

(2) Such accounts shall be kept in such form as may be approved by the Inspector-General and shall contain such particulars as may be prescribed.

(3) The accounts of a society shall be balanced each year on the 31st day of March or such other date as may be fixed by the Inspector-General.

(4) The accounts of a society shall be audited annually in such manner as may be prescribed and by a person who is a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (Central Act 38 of 1949), or by such persons as may be authorised in this behalf by the Government.

12D. Auditors duty to report irregularity.—(1) It shall be the duty of every auditor, auditing the accounts of a society under section 12C to prepare a reprint relating to auditing such account and forward a copy of the same to the Inspector-General.

(2) The auditor shall, in his report, specify all cases of irregular, illegal or improper expenditure, or failure or omission to recover money or other property thereof, and state whether such expenditure, failure, omission, loss or waste was caused in consequence of breach of trust, or misappropriation or any other misconduct on the part of the governing body or any other person."

[*Vide* Goa Act 6 of 1979, sec. 9 (w.e.f. 18-10-1979).]

Sections 12A, 12D and 12E

Gujarat.—Same as in Maharashtra except sub-section (4) of section 12A, sections 12D and 12E.

[*Vide* Gujarat Adaptation of Laws Order, 1961 (w.e.f. 1-5-1961) and Act 11 of 1960, sec. 83.]

In section 12A, in sub-section (1), for the portion beginning with the words "if the proposed name" and ending with the words "or the members of either society", substitute the words, figure and letter "If the proposed change in name is in the opinion of the Registrar undesirable for any of the reasons mentioned in section 3A".

After sub-section (3), add the following sub-section, namely:—

"(4) If, through inadvertence or otherwise, a society is registered by a name, by which it should not have been registered having regard to the provisions of section 3A, the Registrar may, after hearing the society concerned, direct the society to change the name; and the society shall change its name within a period of three months from the date of the direction or within such longer period as the Registrar may think fit to allow in accordance with the provisions of this Act."

[*Vide* Gujarat Act 17 of 1978, sec. 9 (w.e.f. 1-4-1978).]

After section 12C, insert the following sections, namely:—

"*12D. Maintenance of accounts and their balancing and auditing.*—(1) Every governing body entrusted with the management or the affairs of a society registered under this Act (not being a public trust within the meaning of the Bombay Public Trusts Act, 1950) shall keep regular accounts.

(2) Such accounts shall be kept in such form as may be approved by the Registrar and shall contain such particulars as may be prescribed by rules.

(3) The accounts shall be balanced each year on the thirty-first day of March or such other day as may be fixed by the Registrar.

(4) The accounts shall be audited annually in such manner as may be prescribed by rules, by a person who is a Chartered Accountant within the meaning of the Chartered

Accountants Act, 1949 or by such other persons as may be authorised in this behalf by the State Government.

12E. *Auditor's duty to prepare balance-sheet and report irregularities, etc.*—(1) It shall be the duty of every auditor auditing the accounts of a society under section 12D to prepare an income and expenditure account and a balance-sheet and to forward a copy of the same to the Registrar.

(2) The auditor shall in his report specify all cases of irregular, illegal or improper expenditure, or failure or omission to recover money or other property belonging to the society, or of loss or waste of money or other property thereof; and state whether such expenditure, failure, omission, loss or waste was caused in consequence of breach of trust, or misapplication of money or other property belonging to the society or may other misconduct on the part of the governing body or any other person".

[*Vide* Gujarat Act 17 of 1978, sec. 10 (w.e.f. 1-4-1978).]

Section 12A

Himachal Pradesh.—Section 12A—same as in Maharashtra.

[*Vide* H.P. Act 23 of 1973, sec. 6 (w.e.f. 4-12-1973).]

Sections 12A to 12E

Maharashtra.—In its application to the whole of the State of Bombay, after section 12, insert the following sections, namely:—

"12A. *Registration of change of name.*—(1) Where a proposition for change of name has been agreed to and confirmed in the manner prescribed by section 12, a copy of the proposition so agreed to and confirmed shall be forwarded to the Registrar for registering the change of name. If the proposed change in the name is in his opinion undesirable for any of the reasons mentioned in section 3A the Registrar shall refuse to register the change of name.

(2) Save as provided in sub-section (1), the Registrar shall, if he is satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name and issue a certificate of registration altered to meet the circumstances of the case. On the issue of such a certificate the change of name shall be complete.

(3) The Registrar shall charge for any copy of a certificate issued under sub-section (2) a fee of rupee one and all fees so paid shall be accounted for to the State Government.

(4) If, through inadvertence or otherwise, a society is registered by a name which should not have been registered (due regard being had to the provisions of section 3A), the Registrar may, after hearing the party concerned, direct the society to change the name; and the society shall change its name within a period of three months from the date of the direction in accordance with the provisions of this Act, or such longer period as the Registrar may think fit to allow.

12B. *Effect of change of name.*—The change in the name of society shall not affect any rights or obligations of the society or render defective any legal proceeding by or against the society and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

12C. *Registration of change of names effected before coming into force of Bombay Act LIII of 1948.*—If any society registered under this Act has, before the date the coming into force of the Societies Registration Bombay (Amendment) Act, 1948, intimated to the Registrar of Companies the change of its name and if the Registrar has recorded such change, the Registrar may, notwithstanding anything contained in this Act, on an application made by the society in this behalf and on payment of a fee as provided for in sub-section (3) of section 12A, register the change of such name and issue a certificate to the society under sub-section (2) of the said section 12A. On the issue of such certificate the change shall be deemed to be complete from the date on which such change was recorded by the Registrar, notwithstanding the fact that the society had not followed the procedure prescribed in sections 12 and 12A."

[*Vide* Bombay Act 53 of 1948, sec. 3 (w.e.f. 5-11-1948) read with Act 76 of 1958, sec. 2 (w.e.f. 7-10-1958).]

"12D. *Maintenance of accounts and their balancing and accounting.*—(1) Every governing body entrusted with the management of the affairs of a society registered under this Act (not being

society shall change its name within a period of three months from the date of such direction or such longer period as the Inspector-General may think fit to allow, in accordance with the provisions of this Act.

12B. Effect of change of name.—The change of name of society shall not affect any right or obligation of the society or render defective any legal proceeding by or against the society, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

12C. Maintenance of accounts and their balancing and accounting.—(1) Every governing body entrusted with the management of the affairs of a society registered under this Act shall keep regular accounts.

(2) Such accounts shall be kept in such form as may be approved by the Inspector-General and shall contain such particulars as may be prescribed.

(3) The accounts of a society shall be balanced each year on the 31st day of March or such other date as may be fixed by the Inspector-General.

(4) The accounts of a society shall be audited annually in such manner as may be prescribed and by a person who is a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (Central Act 38 of 1949), or by such persons as may be authorised in this behalf by the Government.

12D. Auditors duty to report irregularity.—(1) It shall be the duty of every auditor, auditing the accounts of a society under section 12C to prepare a reprint relating to auditing such account and forward a copy of the same to the Inspector-General.

(2) The auditor shall, in his report, specify all cases of irregular, illegal or improper expenditure, or failure or omission to recover money or other property thereof, and state whether such expenditure, failure, omission, loss or waste was caused in consequence of breach of trust, or misappropriation or any other misconduct on the part of the governing body or any other person."

[*Vide* Goa Act 6 of 1979, sec. 9 (w.e.f. 18-10-1979).]

Sections 12A, 12D and 12E

Gujarat.—Same as in Maharashtra except sub-section (4) of section 12A, sections 12D and 12E.

[*Vide* Gujarat Adaptation of Laws Order, 1961 (w.e.f. 1-5-1961) and Act 11 of 1960, sec. 83.]

In section 12A, in sub-section (1), for the portion beginning with the words "if the proposed name" and ending with the words "or the members of either society", substitute the words, figure and letter "If the proposed change in name is in the opinion of the Registrar undesirable for any of the reasons mentioned in section 3A".

After sub-section (3), add the following sub-section, namely:—

"(4) If, through inadvertence or otherwise, a society is registered by a name, by which it should not have been registered having regard to the provisions of section 3A, the Registrar may, after hearing the society concerned, direct the society to change the name; and the society shall change its name within a period of three months from the date of the direction or within such longer period as the Registrar may think fit to allow in accordance with the provisions of this Act."

[*Vide* Gujarat Act 17 of 1978, sec. 9 (w.e.f. 1-4-1978).]

After section 12C, insert the following sections, namely:—

"*12D. Maintenance of accounts and their balancing and auditing.*—(1) Every governing body entrusted with the management or the affairs of a society registered under this Act (not being a public trust within the meaning of the Bombay Public Trusts Act, 1950) shall keep regular accounts.

(2) Such accounts shall be kept in such form as may be approved by the Registrar and shall contain such particulars as may be prescribed by rules.

(3) The accounts shall be balanced each year on the thirty-first day of March or such other day as may be fixed by the Registrar.

(4) The accounts shall be audited annually in such manner as may be prescribed by rules, by a person who is a Chartered Accountant within the meaning of the Chartered

Accountants Act, 1949 or by such other persons as may be authorised in this behalf by the State Government.

12E. Auditor's duty to prepare balance-sheet and report irregularities, etc.—(1) It shall be the duty of every auditor auditing the accounts of a society under section 12D to prepare an income and expenditure account and a balance-sheet and to forward a copy of the same to the Registrar.

(2) The auditor shall in his report specify all cases of irregular, illegal or improper expenditure, or failure or omission to recover money or other property belonging to the society, or of loss or waste of money or other property thereof; and state whether such expenditure, failure, omission, loss or waste was caused in consequence of breach of trust, or misapplication of money or other property belonging to the society or may other misconduct on the part of the governing body or any other person".

[*Vide* Gujarat Act 17 of 1978, sec. 10 (w.e.f. 1-4-1978).]

Section 12A

Himachal Pradesh.—Section 12A—same as in Maharashtra.

[*Vide* H.P. Act 23 of 1973, sec. 6 (w.e.f. 4-12-1973).]

Sections 12A to 12E

Maharashtra.—In its application to the whole of the State of Bombay, after section 12, insert the following sections, namely:—

"*12A. Registration of change of name.*—(1) Where a proposition for change of name has been agreed to and confirmed in the manner prescribed by section 12, a copy of the proposition so agreed to and confirmed shall be forwarded to the Registrar for registering the change of name. If the proposed change in the name is in his opinion undesirable for any of the reasons mentioned in section 3A the Registrar shall refuse to register the change of name.

(2) Save as provided in sub-section (1), the Registrar shall, if he is satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name and issue a certificate of registration altered to meet the circumstances of the case. On the issue of such a certificate the change of name shall be complete.

(3) The Registrar shall charge for any copy of a certificate issued under sub-section (2) a fee of rupee one and all fees so paid shall be accounted for to the State Government.

(4) If, through inadvertence or otherwise, a society is registered by a name which should not have been registered (due regard being had to the provisions of section 3A), the Registrar may, after hearing the party concerned, direct the society to change the name; and the society shall change its name within a period of three months from the date of the direction in accordance with the provisions of this Act, or such longer period as the Registrar may think fit to allow.

12B. Effect of change of name.—The change in the name of society shall not affect any rights or obligations of the society or render defective any legal proceeding by or against the society and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

12C. Registration of change of names effected before coming into force of Bombay Act LIII of 1948.—If any society registered under this Act has, before the date the coming into force of the Societies Registration Bombay (Amendment) Act, 1948, intimated to the Registrar of Companies the change of its name and if the Registrar has recorded such change, the Registrar may, notwithstanding anything contained in this Act, on an application made by the society in this behalf and on payment of a fee as provided for in sub-section (3) of section 12A, register the change of such name and issue a certificate to the society under sub-section (2) of the said section 12A. On the issue of such certificate the change shall be deemed to be complete from the date on which such change was recorded by the Registrar, notwithstanding the fact that the society had not followed the procedure prescribed in sections 12 and 12A."

[*Vide* Bombay Act 53 of 1948, sec. 3 (w.e.f. 5-11-1948) read with Act 76 of 1958, sec. 2 (w.e.f. 7-10-1958).]

"*12D. Maintenance of accounts and their balancing and accounting.*—(1) Every governing body entrusted with the management of the affairs of a society registered under this Act (not being

a public trust within the meaning of Bombay Public Trusts Act, 1950) shall keep regular accounts.

(2) Such accounts shall be kept in such form as may be approved by the Registrar, and shall contain such particulars as may be prescribed by rules.

(3) The accounts shall be balanced each year on the 31st day of March or such other day as may be fixed by the Registrar.

(4) The accounts shall be audited annually in such manner as may be prescribed by rules and by a person who is a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949, or by such persons as may be authorised in this behalf by the State Government.

12E. Auditor's duty to prepare balance-sheet and report irregularities, etc.—(1) It shall be the duty of every auditor auditing the accounts of a society under section 12D to prepare balance-sheet and income and expenditure account and to forward a copy of the same to the Registrar.

(2) The auditor shall in his report specify all cases of irregular, illegal or improper expenditure or failure or omission to recover money or other property belonging to the society or of loss or waste of money or other property thereof, and state whether such expenditure, failure, omission, loss or waste caused in consequence of breach of trust or misapplication or any other misconduct on the part of the governing body or any other person."

[*Vide* Maharashtra Act 11 of 1968, sec. 7 (w.e.f. 1-11-1968).]

Sections 12A and 12B

Nagaland.—After section 12, insert the following sections, namely:—

"*12A. Registration of change of name.*—Any society registered under this Act may, with the consent of not less than two-third of the total number of its members by a resolution at a general meeting convened for the purpose and subject to the provisions of section 12B change its name.

12B. Notice of change of name.—(1) Notice in writing of every change of name, signed by the secretary and by such members of the society changing its name, shall be sent to the Registrar.

(2) If the proposed name is identical with that by which any other existing society has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the public, the Registrar shall refuse to register the change of name.

(3) Same as provided in sub-section (2), the Registrar shall, if he is satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name and the change of name shall have effect from the date of such registration."

[*Vide* Nagaland Act 14 of 1969, sec. 4.]

Sections 12A to 12C

Orissa.—Same as in Maharashtra with the following modifications:—

(i) In section 12A(1), for the words "If the proposed change in the name is in his opinion undesirable for any reasons mentioned in section 3A", read "if the proposed name is identical with that by which any other existing society has been registered or in the opinion of the Registrar so nearly resembles the name of such other society as is likely to deceive the public or members of either society";

(ii) omit sub-section (4);

(iii) in section 12C for the words "Bombay Act LIII of 1948", read "Orissa Amendment Act, 1969" and for the words "Societies Registration (Bombay Amendment) Act, 1948" read "Societies Registration (Orissa Amendment) Act, 1969"; and

(iv) in section 12B, for the words "by its new name", read "by the new name".

[*Vide* Orissa Act 8 of 1969, sec. 4 (15-4-1969).]

Pondicherry.—After section 12, insert the following sections, namely:—

"*12A. Change of name.*—Any number not less than three-fifths of the members of any society registered under section 3 may, subject to the provisions of section 12B, by a resolution or otherwise change its name.

12B. Registration of change of name.—(1) Where a proposition for change of name has been agreed to and confirmed in the manner prescribed by section 12A, a copy of the proposition so agreed to and confirmed shall be forwarded to the Registrar of Companies for registering the change of name.

(2) Save as provided in section 18A, the Registrar shall, if he is satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name and issue a certificate of registration altered to meet the circumstances of the case. On the issue of such a certificate, the change of the name shall be complete.

(3) The Registrar shall charge for any copy of a certificate issued under sub-section (2), a fee of rupee one and fees so paid shall be accounted for to the Government.

12C. Effect of change of name.—The change in the name of society shall not affect any rights or obligations of the society or render defective any legal proceeding by or against the society, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its name."

[*Vide* Pondicherry Act 9 of 1969, sec. 5 (w.e.f. 1-1-1970).]

Sections 12A and 12B

Punjab: Haryana: Chandigarh.—Sections 12A and 12B are the same as sections 12A and 12B in Maharashtra.

[*Vide* East Punjab Act 6 of 1949, sec. 4 (w.e.f. 8-4-1949); Central Act 31 of 1966, sec. 89.]

Sections 12A to 12D

Uttar Pradesh.—After section 12, insert the following sections, namely:—

"*12A. Change of name.*—Any society registered under this Act may, with the consent of less than two-thirds of the total number of its members, and with the previous approval of the Registrar in writing change its name by resolution passed as a general meeting convened for the purpose.

12B. Notice of change of name or objects.—(1) Notice in writing of every change of objects made under section 12 of name made under section 12A signed by the secretary and any three members of the society shall be sent to the Registrar.

(2) Where the Registrar is satisfied that the provisions of this Act in respect of objects or name of society and in respect of change of objects or of name, as the case may be, have been complied with, he may subject to the provisions of section 12C register the change of name which shall have effect from the date of such registration.

12C. Effect of change of name or objects.—The change in the objects or name of a society shall not affect any rights or obligations of the society, nor render defective any legal proceedings by or against the society, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

12D. Registrar's power to cancel registration in certain circumstances.—(1) Notwithstanding anything contained in this Act, the Registrar may, by order in writing, cancel the registration of any society on any of the following grounds:—

(a) that the registration of the society or of its name or change of name is contrary to the provisions of this Act or of any other law for the time being in force;

(b) that its activities or proposed activities have been or are or will be subversive of the objects of the society or opposed to public policy;

[a][(c) that the registration or the certificate of renewal has been obtained by misrepresentation or fraud:]

Provided that no order of cancellation of registration of any society shall be passed until the society has been given a reasonable opportunity of altering its name or object or of showing cause against the action proposed to be taken in regard to it.

[b][(2) An appeal against an order made under sub-section (1) may be preferred to the Commissioner of the Division in whose jurisdiction the Headquarter of the society lies, within one month from the date of communication of such order.

(3) The decision of the Commissioner under sub-section (2), shall be final and shall not be called in question in any court.]

[*Vide* Uttar Pradesh Act 52 of 1975, sec. 6 (w.e.f. 10-10-1975); Act 26 of 1979, secs. 5 and 6 (w.e.f. 16-7-1979).]

(a) Inserted by Uttar Pradesh Act 11 of 1984, sec. 5 (w.e.f. 30-4-1984).

(b) Substituted by Uttar Pradesh Act 11 of 1984, sec. 5 (w.e.f. 30-4-1984).

Sections 12A to 12C

West Bengal.—After section 12, insert sections 12A, 12B and 12C. Sections 12A and 12B are the same as sections 12A and 12B in Maharashtra: and section 12C is as follows:—

"12C. *Registration of change of name effected in certain cases.*—If any society registered under this Act has, before the date of the coming into force of the Societies Registration (West Bengal Amendment) Act, 1950 intimated to the Registrar of Joint-Stock Companies the change of its name and if the Registrar has recorded such change, the Registrar may, notwithstanding anything contained in this Act, on an application made by the society in this behalf and on payment of a fee as provided for in sub-section (3) of section 12A, register the change of such name and issue a certificate to the society under sub-section (2) of the said section 12A. On of the issue of such certificate the change shall deemed to be complete from the date on which such change was recorded by the Registrar, notwithstanding the fact that the society had not followed the procedure prescribed in sections 12 and 12A."

[*Vide* West Bengal Act 16 of 1950, sec. 4 (w.e.f. 30-3-1950).]

13. Provision for dissolution of societies and adjustment of their affairs.—Any number not less than three-fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable thereto, if any, and if not, then as the governing body shall find expedient, provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of the society is situated; and the Court shall make such order in the matter as it shall deem requisite:

Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person, or by proxy, at a general meeting convened for the purpose:

Provided that [1][whenever any Government] is a member of, or a contributor to, or otherwise interested in any society registered under this Act, such society shall not be dissolved [2][without the consent of the Government of the [3][State] of registration.]

STATE AMENDMENTS

Assam.—In section 13—

(i) after the words "as the governing body", insert the words "or special committee formed to replace the governing body in respect of all matters affecting the winding up of the affairs of the society";

(ii) after the words "the said governing body", insert the words "should it not have been replaced by the aforesaid special committee in respect of all matters affecting the winding up of the society or the said special committee";

(iii) after section 13, insert the following proviso, namely:—

"Provided that any matter decided by three-fifths of those present either in person or by proxy at any meeting of the members of the society or of the governing body thereof

1. Subs. by the A.O. 1937, for "whenever the Government".
2. Subs. by the A.O. 1937, for "without the consent of the Government".
3. Subs. by the A.O. 1950, for "Province".

or of any special Committee appointed at a general meeting for the purpose of winding up of the affairs of a society shall not be deemed to be a matter of dispute within the meaning of this section."

[*Vide* Assam Act 15 of 1948, sec. 2 (w.e.f. 20-10-1948).]

Nagaland.—(1) In section 13, after the words "as the governing body", insert the words "or Special committee formed to replace the governing body in respect of all matters affecting the winding up of the society, or the said official committee".

(2) To section 13, add the following proviso, namely:—

"Provided that any matter decided by three-fifth of those present either in person or by proxy of any meeting of the members of the society or of the governing body thereof or of any special committee appointed at a General Meeting for the purpose of winding up of the affairs of a society shall not be deemed to be a matter of dispute within the meaning of this section."

[*Vide* Nagaland Act 14 of 1969.]

Uttar Pradesh.—In section 13, for the words "chief building of the society", substitute the words "registered office of the society".

[*Vide* Uttar Pradesh Act 52 of 1975, sec. 7 (w.e.f. 10-10-1975).]

Sections 13A and 13B

After section 13, insert following sections, namely:—

"*13A. Power of Registrar to apply for dissolution.*—(1) Where in the opinion of Registrar, there are reasonable grounds to believe in respect of a society registered under this Act that any of the grounds mentioned in clauses (a) to (e) of sub-section (1) of section 13B exists he shall send to the society, a notice calling upon it to show cause within such time as may be specified in the notice why the society be not dissolved.

(2) if on or before the date specified in the notice or within such extended period as the Registrar may allow, the society fails to show any cause or if the cause shown is considered by the Registrar to be unsatisfactory, the Registrar, may move the Court referred to in section 13 for making an order of the dissolution of the society.

13B. Dissolution by Court.—(1) On the application of the Registrar under section 13A or under section 24 or on an application made by not less than one-tenth of the members of a society registered under this Act, the Court referred to in section 13 may make an order for the dissolution of the society on any of the following grounds, namely:—

(a) that the society has contravened any provision of this Act or of any other law for the time being in force and it is just and equitable that the society should be dissolved:

(b) that the number of the members of the society is reduced below seven;

(c) that the society has ceased to function for more than three years preceding the date of such application;

(d) that the society is unable to pay its debts or meet its liabilities; or

(e) that the registration of the society has been cancelled under section 12D on the ground that its activities or proposed activities have been or are or will be opposed to public policy.

(2) Without prejudice to the provisions of sub-section (1) or of section 12D, the Court may on an application of the District Magistrate in this behalf make an order for the dissolution of a society on the ground that the activities of the society constitute a public nuisance or are otherwise opposed to public policy.

(3) When an order for the dissolution of a society is made under sub-section (1) or sub-section (2), all necessary steps for the disposal and the settlement of the property of the society, its claims and liabilities and any other adjustment of its affairs take place in manner as the Court may direct."

[*Vide* Uttar Pradesh Act 52 of 1975, sec. 8 (w.e.f. 10-10-1975).]

COMMENTS

Section 15 postulates that a person may resign from the membership of the society. A member has to be served with notice before expulsion and in the absence of notice the plaintiff would be deemed to be a member of the society. He will not be entitled to vote at the meeting until the up-to-date subscription has not been paid, he can therefore bring suit in the court by virtue of section 13 of the Societies Registration Act; *Sarbjit Singh* v. *All India Fine Arts & Crafts Society*, AIR 1990 (NOC) 26 Del.

The jurisdiction to adjudicate disputes with respect to dissolution and adjustment of the affairs of the society is vested in the principal Court of original jurisdiction of the district where the society's registered office is situated and the rest of the matters arising between the society and third person are out of the purview of this section; *Potti Swami & Bros.* v. *Rao Saheb D. Govindarajulu*, AIR 1960 AP 605: (1960) 1 Andh WR 326: ILR (1960) 2 Andh Pra 560.

14. Upon a dissolution no member to receive profit.—If upon the dissolution of any society registered under this Act there shall remain, after the satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to or distributed among the members of the said society or any of them, but shall be given to some other society, to be determined by the votes of not less than three-fifths of the members present personally or by proxy at the time of the dissolution, or, in default thereof, by such Court as aforesaid:

Clause not to apply to Joint-Stock Companies.—Provided, however, that this clause shall not apply to any society which shall have been founded or established by the contributions of shareholders in the nature of a Joint-Stock Company.

STATE AMENDMENTS

Assam.—In section 14, after the words "some other society", insert the words "whether registered under this Act or not".

[*Vide* Assam Act 15 of 1948, sec. 3 (w.e.f. 20-10-1948).]

Gujarat.—Same as in Maharashtra.

[*Vide* Gujarat Adaptation of Laws Order 1961 and Act 11 of 1960, sec. 83.]

Maharashtra.—The following is an amendment of section 14, namely:—

'Notwithstanding anything contained in section 14 of the Societies Registration Act, 1860, hereinafter called "the said Act", it shall be lawful for the members of any society dissolved under section 13 of the said Act to determine by a majority of the votes of the members present personally or by proxy at the time of dissolution of such society that any property whatsoever remaining after the satisfaction of all its debts and liabilities shall be given to Government to be utilised for any of the purposes referred to in section 1 of the said Act.'

[*Vide* Bombay Act 2 of 1912, sec. 1 (w.e.f. 29-5-1912).]

Nagaland.—In section 14, after the words "some other society", insert the words "whether registered under this Act or not".

[*Vide* Nagaland Act 14 of 1969.]

Section 14A

Bihar.—After section 14, insert the following section, namely:—

"*14A. Disposal of property of a dissolved society.*—Notwithstanding anything contained in section 14 it shall be lawful for the members of any society dissolved under section 13 to determine by a majority of the votes of the members present personally or by proxy at the time of the dissolution of such society that any property whatsoever remaining after the satisfaction of all the debts and liabilities shall be given to Government to be utilised for any of the purposes referred to in section 1."

[*Vide* Bihar Act 2 of 1960, sec. 4 (w.e.f. 8-2-1960).]

Goa, Daman and Diu.—After section 14, insert the following section, namely.—

"*14A. Disposal of property of a dissolved society.*—Notwithstanding anything contained in section 14, it shall be lawful for the members of any society dissolved under section 13 to determine by a majority of the votes of the members present personally or by proxy at the time

of dissolution of such society that any property whatsoever remaining after the satisfaction of all its debts and liabilities shall be given to Government to be utilised for any of the purposes referred to in section 1A."

[*Vide* Goa Act 6 of 1979, sec. 10 (w.e.f. 10-10-1979).]

Uttar Pradesh.—After section 14, insert following section, namely:—

"*14A. Disposal of property of a dissolved society.*—Notwithstanding anything contained in section 14, it shall be lawful for the members of any society dissolved under section 13 to determine by a majority of the votes of the members present personally or by proxy at the time of the dissolution of such society that any property whatsoever remaining after the satisfaction of all the debts and liabilities shall be given to the Government to be utilised for any of the purposes referred to in section 1."

[*Vide* Uttar Pradesh Act 52 of 1975, sec. 9 (w.e.f. 10-10-1975).]

COMMENTS

Tax liability of the society cannot be enforced against its members; *Swami Satchitanand* v. *2nd Additional Income-tax Officer,* AIR 1964 Ker 118: 1963 Ker LJ 930: (1964) 53 ITR 533.

15. Member defined disqualified members.—For the purposes of this Act a member of a society shall be a person who, having been admitted therein according to the rules and regulations thereof, shall have paid a subscription, or shall have signed the roll or list of members thereof, and shall not have resigned in accordance with such rules and regulations;

but in all proceedings under this Act no person shall be entitled to vote or be counted as a member whose subscription at the time shall have been in arrears for a period exceeding three months.

STATE AMENDMENT

Uttar Pradesh.—Renumber section 15 as sub-section (1) thereof and after sub-section (1) so renumbered, insert the following sub-section, namely:—

"(2) Every society shall maintain a register of members giving such particulars as may be prescribed."

[*Vide* Uttar Pradesh Act 11 of 1984, sec. 6 (w.e.f. 30-4-1984).]

COMMENTS

(i) The Act does not contemplate expulsion of any member from the society. The only provision is that a member may resign from the membership of the society. Before any such member is expelled from the society he must be served with a notice in case he has failed to pay the subscription. Even if the subscription is not paid for a period exceeding 3 months he still remains a member but without right to vote. A suit by such a member against society is maintainable; *Sarabjit Singh* v. *All India Fine Arts and Crafts Society,* AIR 1990 (NOC) 26 (Del).

(ii) Due to the fight between two rival groups, for appointment of managing committee, the High Court appointed a commissioner to hold valid annual general meeting for the very purpose; *Gegong Apang* v. *Sanjoy Tassar,* AIR 2001 Gau 1: 2001 (2) Civ LJ 581: 2003 (1) Gau LR 309.

16. Governing body defined.—The governing body of the society shall be the governors, council, directors, committee, trustees or other body to whom by the rules and regulations of the society the management of its affairs is entrusted.

STATE AMENDMENT

Section 16A

Uttar Pradesh.—After section 16, insert the following section, namely:—

"*16A. Disqualification for holding office in society.*—A person who is an undischarged insolvent or who has been convicted of any offence in connection with the formation, promotion, management or conduct of the affairs of a society, or of a body corporate, or of an offence involving moral turpitude shall be disqualified for chosen as and for being a member of the governing body or the President, Secretary or any other office-bearer of a society."

[*Vide* Uttar Pradesh Act 52 of 1975, sec. 10 (w.e.f. 10-10-1975).]

17. Registration of societies formed before Act.—Any company or society established for a literary, scientific or charitable purpose, and registered under Act 43 of 1850*, or any such society established and constituted previously to the passing of this Act but not registered under the said Act 43 of 1850*, may at any time hereafter be registered as a society under this Act;

Subject to the proviso that no such company or society shall be registered under this Act unless an assent to its being so registered has been given by three-fifths of the members present personally, or by proxy, at some general meeting convened for that purpose by the governing body.

In the case of a company or society registered under Act 43 of 1850*, the directors shall be deemed to be such governing body.

In the case of a society not so registered, if no such body shall have been constituted on the establishment of the society, it shall be competent for the members thereof, upon due notice, to create for itself a governing body to act for the society thenceforth.

STATE AMENDMENTS

Bihar.—For section 17, substitute the following section, namely:—

"17. *Registration of society formed under other Acts.*—Any company or society established for a literary, scientific or charitable purpose and registered under the Indian Companies Act 1913 (VII of 1913), or under the Companies Act, 1956 (1 of 1956) and not registered under this Act may, at any time hereafter, be registered as a society under this Act:

Provided that no such company or society shall be registered under this Act unless an assent to its being so registered has been given by three-fifths of the members present there personally or by proxy, at some general meeting convened for the purpose by governing body.

In case of a company or society registered under the Indian Companies Act, 1913 (VII of 1913), or the Companies Act, 1956 (1 of 1956), the directors of the said company or society, as the case may be, shall be deemed to be such governing body.

In the case of a society not so registered, if no such body shall have been constituted on the establishment of the society, it shall be competent for the members thereof, upon due notice, to create for itself a governing body to act for the society thenceforth."

[*Vide* Bihar Act 2 of 1960, sec. 5 (w.e.f. 8-2-1960).]

Goa, Daman and Diu.—In section 17—

(i) for the words and figures "Act 43 of 1850", wherever they occur, substitute the words "the Registration of Societies Order";

(ii) for the words "passing of this Act", substitute the words "commencement of this Act in this Union Territory",

[*Vide* Goa Act 6 of 1979, sec. 11 (w.e.f. 18-10-1979).]

Gujarat.—Same as in Maharashtra.

[*Vide* Gujarat Adaptation of Laws Order, 1961 and Act 11 of 1960, sec. 83.]

Maharashtra.—In section 17, for the words and figures "passing of this Act but not registered under the said Act XLII 1850", substitute the words and figures "commencement of this Act in the relevant part of the State but not registered under Act XLIII of 1850 or any law for registration of societies or companies in force immediately before such commencement, as the case may be".

[*Vide* Bombay Act 86 of 1956, sec. 4 (w.e.f. 7-10-1958).]

18. Such societies to file memorandum, etc., with Registrar of Joint-Stock Companies.—In order to any such society as is mentioned in the last preceding section obtaining registry under this Act, it shall be sufficient that the governing body file with

* Act 43 of 1850, *i.e.*, the Joint-Stock Companies Act, 1850 stands repealed by section 219 of the Indian Companies Act, 1866 (10 of 1866), the Indian Companies Act, 1866 also stands repealed by the Companies Act, 1956 (1 of 1956). *See* now Companies Act, 1956 (1 of 1956).

the Registrar of Joint-Stock Companies [1][***] a memorandum showing the name of the society, the objects of the society, and the names, addresses and occupations of the governing body, together with a copy of the rules and regulations of the society certified as provided in section 2, and a copy of the report of the proceedings of the general meeting at which the registration was resolved on.

STATE AMENDMENTS

Andhra Pradesh.—In section 18, for the words "the Registrar of Joint-Stock Companies", substitute the words "the Inspector-General".

[*Vide* the Societies Registration (Andhra Amendment) Act, 1954 (10 of 1954), sec. 3 (w.e.f 1-10-1954) as re-entered by Andhra Pradesh Act 6 of 1956 (w.r.e.f. 1-10-1954).]

Assam: Manipur: Tripura.—In section 18, for the words "Registrar of Joint-Stock Companies", substitute the words "Registrar of Societies,"

[*Vide* Assam Act 7 of 1957, sec. 2 (w.e.f. 17-7-1957) and G.S.Rs. 85 and 86 of 1960, published in the Gazette of India, Pt. II, Sec. 3(i), pp. 145, 146.]

Bihar.—In section 18, for the words "Registrar of Joint-Stock Companies", substitute the words "Inspector-General of Registration".

[*Vide* Bihar Act 19 of 1956, sec. 6 (w.r.e.f. 21-12-1955).]

Goa, Daman and Diu.—In section 18, for the words "the Registrar of Joint-Stock Companies", insert the words "the Inspector-General".

[*Vide* Goa Act 6 of 1979, sec. 12 (w.e.f. 18-10-1979).]

Gujarat.—Same as in Maharashtra.

[*Vide* Gujarat Adaptation of Laws Order, 1961 and Act 11 of 1960, sec. 83.]

Himachal Pradesh.—Same as in Punjab.

[*Vide* Himachal Pradesh Act 23 of 1973, sec. 7 (w.e.f. 4-12-1973).]

Kerala.—In section 18, for the words "the Registrar of Joint-Stock Companies", substitute the words "the Inspector-General".

[*Vide* Madras Act 24 of 1954.]

Maharashtra.—In section 18 (including the marginal note thereto) omit the words, "of Joint-Stock Companies".

[*Vide* Bombay Act 76 of 1958, sec. 5 (w.e.f. 7-10-1958).]

Nagaland.—In section 18, for the words "Registrar of Joint-Stock Companies", substitute the words "Registrar of Societies".

[*Vide* Nagaland Act 14 of 1969.]

Orissa.—In section 18, for the words "Registrar of Joint-Stock Companies", substitute the words "Registrar of Societies".

[*Vide* Orissa Act 21 of 1958, sec 3 (w.e.f. 1-1-1961).]

Pondicherry.—In section 18, for the words "Registrar of Joint-Stock Companies", substitute the words "Registrar of Companies".

[*Vide* Pondicherry Act 9 of 1969, sec. 6 (w.e.f. 1-1-1970).]

Punjab: Haryana: Chandigarh: Delhi and Himachal Pradesh.—In its application to the State of Punjab in section 18 omit the words "of Joint-Stock Companies".

[*Vide* Punjab Act 31 of 1957, sec. 3 and G.S.R. 83 and G.S.R. 84 of 1960, published in the Gazette of India, 1960, Pt. III, Sec. 3(i), pp. 144, 145.]

Tamil Nadu.—Same as in Andhra Pradesh.

[*Vide* Tamil Nadu Act 24 of 1954, sec. 2 (iv) (w.e.f. 1-1-1954).]

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1. The words and figures "under Act No. 19 of 1857" omitted by Act 16 of 1874, sec. 1 and Sch., Pt. I. *See* now Companies Act, 1956 (1 of 1956).

Uttar Pradesh.—In section 18, for the words "Registrar of Joint-Stock Companies", substitute the word "Registrar".

[*Vide* Uttar Pradesh Act 25 of 1958, sec. 2 (w.e.f. 25-8-1958).]

Section 18A

Pondicherry.—After section 18, insert the following new section, namely:—

"*18A. Power of Registrar to refuse registration in certain cases.*—(1) The Registrar shall refuse to register—

(a) a society under section 3;

(b) the change of names made under section 12A; or

(c) a society under section 17;

if the proposed name of such society is undesirable or identical with that by which any other existing society has been registered or in the opinion of the Registrar so nearly resembles such other name as to be likely to deceive the public or the members of either party.

(2) If any two or more societies which have been registered with identical names, or with names which, in the opinion of the Registrar, so nearly resemble each other as to be likely to deceive the public or the members of such societies, the society which was so registered first of all shall continue to function under its original name and other such societies shall change and may be required by the Registrar to change their names suitably within a period of six months from the commencement of this Act."

[*Vide* Pondicherry Act 9 of 1969, sec. 7 (w.e.f. 1-1-1970).]

19. Inspection of documents, certified copies.—Any person may inspect all documents filed with the Registrar under this Act on payment of a fee of one rupee for each inspection; and any person may require a copy or extract of any document or any part of any document, to be certified by the Registrar, on payment of two annas for every hundred words of such copy or extract; and such certified copy shall be *prima facie* evidence of the matters therein contained in all legal proceedings whatever.

STATE AMENDMENTS

Andhra Pradesh.—In section 19, for the words "the Registrar", substitute the words "the Inspector-General".

[*Vide* the Societies Registration (Andhra Amendment) Act, 1954 (10 of 1954), sec. 3 (w.e.f. 1-10-1954) as re-enacted by Andhra Pradesh Act 6 of 1956, sec. 4 and Sch. III (w.r.e.f. 1-10-1954).]

Assam: Manipur: Tripura.—In its application to the State of Assam, in section 19, for the words "two annas" in between the words "payment of" and "for every hundred" words, substitute the words, "fifteen naye paise".

[*Vide* Assam Act 11 of 1958, sec. 2 (w.e.f. 1-4-1958) and G.S.Rs. 85 and 86 of 1960, published in the Gazette of India, 1960, Pt. II, Sec. 3(i), pp. 144, 145.]

Bihar.—In section 19, for the words "Registrar" wherever it occurs, substitute the words "Inspector-General of Registration".

[*Vide* Bihar Act 19 of 1956, sec. 7 (w.r.e.f. 21-12-1955).]

Goa, Daman and Diu.—In section 19,—

(i) for the words "Any person may inspect," substitute the words "Except as otherwise provided by section 4A, any person may inspect;"

(ii) for the words "and any person may require a copy or extract of any document or any part of any document, to be certified by the Registrar, on payment of two annas for every hundred words of such copy or extract", substitute the words "or may require the Inspector-General to give him a certified copy or extract of any document or any part thereof on payment of such fee as the Government or any officer authorised by it may by notification in the Official Gazette fix in that behalf".

[*Vide* Goa Act 6 of 1979, sec. 13 (w.e.f. 18-10-1979).]

Gujarat.—(i) Same as in Maharashtra (i).

[*Vide* Bombay Act 76 of 1958; Gujarat A.L.O. 1961 and Act 11 of 1960, sec. 83.]

(ii) In section 19, for the words "Any person may inspect", substitute the words, figure and letter "Except as otherwise provided by section 4B, any person may inspect".

[*Vide* Gujarat Act 17 of 1978, sec. 11 (w.e.f. 1-4-1978).]

Himachal Pradesh.—In section 19, for the words "two annas", substitute the words "twenty-five paise".

[*Vide* H.P. Act 23 of 1973, sec. 8 (w.e.f. 4-12-1973).]

Kerala.—In section 19, for the words "the Registrar", wherever they occur, substitute the words "the Inspector-General".

[*Vide* Madras Act 24 of 1954.]

Maharashtra.—In section 19,—

(i) for the words "and any person may require a copy or extract of any document or any part of any document to be certified by the Registrar on payment of two annas for every hundred words of such copy or extract", substitute the words "or may require the Registrar to give him a certified copy or extract or any document or any part thereof on payment of such fee as the State Government or any officer authorised by it may by notification in the Official Gazette fix in that behalf".

[*Vide* Bombay Act 76 of 1958, sec. 6 (w.e.f. 7-10-1958).]

(ii) for the words "Any person may inspect" substitute the words, "Except as otherwise provided by section 4A, any person may inspect".

[*Vide* Maharashtra Act 11 of 1968, sec. 8 (w.e.f. 1-10-1968).]

Nagaland.—In section 19, for the words "two annas", substitute the words "fifteen paise".

[*Vide* Nagaland Act 14 of 1969.]

Orissa.—In section 19, for the words "Registrar", substitute the words "Registrar of Societies".

[*Vide* Orissa Act 21 of 1958, sec. 8 (w.e.f. 1-1-1961).]

Pondicherry.—In section 19, for the words "two annas", substitute the words, "fifteen paise".

[*Vide* Pondicherry Act 9 of 1969, sec. 8 (w.e.f. 1-1-1970).]

Punjab: Haryana: Chandigarh: Delhi.—In its application to the State of Punjab, in section 19, for the words "two annas", substitute the words "twenty-five naye paise".

[*Vide* Punjab Act 14 of 1961, sec. 2, Act 31 of 1966; G.S.Rs. 83 and 84, published in the Gazette of India, 1960, Pt. II, Sec. 3(i), pp. 144, 145.]

Tamil Nadu.—In its application to the State of Madras, in section 19,—

(i) for the words "the Registrar", substitute the words "the Inspector-General".

[*Vide* Madras Act 24 of 1954, sec. 2(iii) (w.e.f. 1-9-1954).]

(ii) for the words "two annas for every hundred words", substitute the words "twenty-five naye paise of every two hundred words or part thereof".

[*Vide* Tamil Nadu Act 9 of 1960, sec. 2 and Sch. (w.e.f. 1-4-1961).]

Uttar Pradesh.—In section 19,—

(i) for the words "on payment of a fee of one rupee for each inspection", substitute the words "on payment of such fee as the State Government may, by notification in the Official Gazette, fix"; and

(ii) for the words "on payment of two annas for every hundred words of such copy or extract" substitute the words "on payment of such fee as the State Government may, by notification in the Official Gazette, fix".

[*Vide* Uttar Pradesh Act 52 of 1975, sec. 11 (w.e.f. 11-10-1975).]

20. To what societies the Act applies.—The following societies may be registered under this Act:—

Charitable societies, the military orphan funds or societies established at the several presidencies of India, societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, [1][the diffusion of political education], the foundation or maintenance of libraries or

1. Ins. by Act 22 of 1927, sec. 2.

reading-rooms for general use among the members or open to the public, or public museums and galleries of paintings and other work of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.

STATE AMENDMENTS

Bihar.—In section 20, after the words "science, literature", insert the words "industry, agriculture".

[*Vide* Bihar Act 2 of 1960, sec. 6 (w.e.f. 8-2-1960).]

Delhi.—In section 20, for the words "promotion of science, literature, or the fine arts", substitute the words "promotion of social welfare, activities conducive to the promotion and improvement of the natural environment (including forests, lakes, rivers and wild life), compassion for living creatures, literature, science, sports, games or the fine arts".

[*Vide* Act 26 of 1983, sec. 2(c) (w.r.e.f. 22-6-1983).]

Haryana.—In section 20, for the words "instruments, or designs", substitute the words "instruments or designs, promotion of the interest or welfare of the public and any other object as may be notified by the Government as beneficial to the public".

[*Vide* Haryana Act 23 of 1974, sec. 2 (w.e.f. 5-8-1974).]

Himachal Pradesh.—In section 20, after the words "established for the promotion of" and before the word "science", insert the words "Khadi and Village Industry, Rural Development".

[*Vide* Himachal Pradesh Act 7 of 1992, sec. 2 (w.e.f. 10-4-1992).]

Maharashtra.—In its application to the whole of the State of Bombay, section 29 shall be renumbered as sub-section (1) of that section and after sub-section (1) so renumbered, add the following sub-section, namely:—

"(2) Notwithstanding anything contained in sub-section (1), any society registered under the Public Societies Registration Act (Hyderabad Act 1 of 1350- Fasli) for any public or religious purpose and operating in the Hyderabad area of the State of Bombay at the commencement of the Societies Registration (Bombay Extension and Amendment) Act, 1958 shall be deemed to be and continue to be registered under this Act".

[*Vide* Bombay Act 76 of 1958, sec. 7 (w.e.f. 7-10-1958).]

Pondicherry.—In section 20, after the words "instruments, or designs", insert the words "the dissemination of social economic education, promotion of the interest or welfare of the public or a section of the public or of non-trading associations with objects confined to the Union territory and any other objects as may be notified by the Government as being beneficial to the public or to a section of the public".

[*Vide* Pondicherry Act 9 of 1969, sec. 9 (w.e.f. 1-1-1970).]

Uttar Pradesh.—In section 20, after the words "established for the promotion of" and before the word "science", insert the words "Khadi and Village Industry, Panchayat Industry, Rural Development".

[*Vide* Uttar Pradesh Act 11 of 1984, sec. 7 (w.e.f. 30-4-1984).]

Section 21

Goa, Daman and Diu.—After section 20, insert the following section, namely:—

21. *Powers to make rules.*—(1) The Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act;

(2) Every rule made this section shall be laid as soon as may be after it is made, before the Legislative Assembly of Goa, Daman and Diu, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions and if before the expiry of the sessions immediately following the session or the successive sessions aforesaid, the Assembly agrees in making any modification in any such rule or the Assembly agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the rule."

[*Vide* Goa Act 6 of 1979, sec. 14 (w.e.f. 18-10-1979).]

Himachal Pradesh.—After section 20, insert new section 21, as follows:—

"21. *Cognizance of offence.*—No Court inferior to that of a Magistrate of the first class shall try any offence under this Act, nor shall cognizance of any such offence be taken except on a complaint in writing by the Registrar or any person authorised by him in writing in this behalf."

[*Vide* H.P. Act 23 of 1973, sec. 9 (w.e.f. 4-12-1973).]

Punjab: Haryana: Chandigarh.—After section 20, insert the following section, namely:—

"21. *Cognizance of offence.*—No Court inferior to that of a Judicial Magistrate of the first class shall try any offence under this Act nor shall cognizance of any such offence be taken except on a complaint in writing by the Registrar or any person authorised by him in writing in this behalf."

[*Vide* East Punjab Act 6 of 1949, sec. 5 (w.e.f. 8-4-1949); Punjab Act 25 of 1964, sec. 2 and Sch., Pt. II (w.e.f. 2-10-1964) and Central Act 31 of 1966, sec. 89.]

Sections 21 to 24

Andhra Pradesh.—(1) After section 20, insert the following sections, namely:—

'*CHAPTER II*

SPECIAL PROVISIONS IN RESPECT OF SOCIETIES FINANCED WHOLLY OR SUBSTANTIALLY FROM THE FUNDS OF THE GOVERNMENT,

21. *Definitions.*—In this Chapter,—

(i) "Government" means State Government of Andhra Pradesh;

(ii) "society" means a society either wholly or substantially financed from out of the funds of the Government.

22. *Chapter to override other provisions of the Act.*—The provisions of this Chapter shall have effect notwithstanding anything contained in Chapter I of this Act or any other law for the time being in force.

23. *Dissolution of society.*—(1) It shall be competent for the Government, by order and for reasons to be recorded in writing, to dissolve a society with effect from such date as may be specified in the order:

Provided that the Government shall before issuing an order dissolving a society, communicate to the governing body of the society the proposal to dissolve, fix a reasonable time for the governing body for making a representation against the proposal and consider its representation, if any:

Provided further that the Government may, after settling the liabilities, if any, of the dissolved society, make over its properties, whether movable or immovable, to any other society having identical or similar objects, and where there is no such society, the property shall vest in such officer or authority, as may be specified by the Government in this behalf, until a society having identical or similar object is formed whereafter the properties shall stand transferred to such society.

(2) On the date fixed for the dissolution of a society under sub-section (1), the registration of the society shall stand cancelled and the society shall cease to exist as a corporate body.

24. *Power to divide or amalgamate societies.*—(1) Where in the opinion of the Government it is necessary to divide a society or amalgamate two or more societies, they may, by order and from a date fixed therein, direct the division or amalgamation, as the case may be, and issue the necessary certificates of registration:

Provided that the Government shall, before issuing an order either dividing a society or amalgamating two or more societies, communicate to the governing body or bodies concerned the proposal to divide or, as the case may be, to amalgamate the society or societies, fix a reasonable time for the governing body or bodies for making a representation against the proposal and consider the representations, if any, received from the body or bodies.

(2) Where a society is divided or where two or more societies are amalgamated, the registration of the society or societies divided or, as the case may be, amalgamated shall stand cancelled and the concerned society or societies shall cease to exist as corporate bodies.

(3) The order referred to in sub-section (1) shall contain the particulars of constitution, authorities, property, rights and interests, liabilities, duties and obligations of the societies or society concerned."

[*Vide* Andhra Pradesh Act 12 of 1984, sec. 2(2) (w.r.e.f. 2-12-1983).]

Sections 21 and 22

Assam: Manipur: Tripura.—In its application to the State of Assam, after section 20 insert the following sections, namely:—

"21. *Penalties.*—(1) If the President, Secretary or any other person authorised in this behalf by a resolution of the governing body of the society fails to comply with the provisions of section 4, he shall, on conviction be punishable with fine which may extend to five hundred rupees and in case of a continuing breach, shall also be punishable with fine not exceeding fifty rupees for each day, during the period the breach continues after first conviction for such offence.

(2) If any person wilfully makes or causes to be made any false entry in, or any omission from, the list required by section 4, or in or from any statement or copy of rules or of alterations in rules sent to the Registrar of Societies under section 4A, he shall, on conviction, be punishable with fine which may extend to two thousand rupees.

"22. *Procedure.*—(1) No Court inferior to that of a Magistrate of the First Class shall try an offence punishable under this Act.

(2) No Court shall take cognizance of an offence punishable under this Act except upon complaint made by the Registrar of Societies or any other person authorised in writing by him in this behalf."

[*Vide* Assam Act 11 of 1952, sec. 3 (w.e.f. 15-10-1952), Act 7 of 1957, sec. 2 (w.e.f. 17-7-1957); G.S.Rs. 83 and 84 of 1960, published in the Gazette of India, Pt. II, Sec. 3(i), pp. 144, 145.]

Nagaland.—After section 20, insert the following sections, namely:—

"21. *Penalties.*—(1) If the President, Secretary or any other person authorised in this behalf by a resolution of the governing body of the society fails to comply with the provisions of section 4, he shall, on conviction, be punishable with fine which may extend to five hundred rupees and in case of a continuing breach, shall also be punishable with fine not exceeding fifty rupees for each day, during the period the breach continues after first conviction for such offence.

(2) If any person wilfully makes or causes to be made false entry in, or any ommission from, the list required by section 4, or in any form any statement or copy of rules or of alteration in rules sent to the Registrar of Societies under section 4A, he shall on conviction be punishable with fine which may extend to two thousand rupees."

"22. *Procedure.*—(1) No court inferior to that of a Magistrate of the first class shall try an offence punishable under this Act.

(2) No court shall take cognizance of an offence punishable under this Act except upon complaint made by the Registrar of Societies or any other person, authorised in writing by him, in this behalf."

[*Vide* Nagaland Act 14 of 1969.]

Sections 21 to 24

Bihar.—After section 20, insert the following sections, namely:—

"21. *Penalty for non-compliance of section 4 or making a false entry.*—(1) If the President, Secretary or any person authorised in this behalf by a resolution of the governing body of the society fails to comply with the provisions of section 4, he shall be punished with fine which may extend to five hundred rupees and to a further fine not exceeding fifty rupees for each day during which the default is continued after conviction for such offence.

(2) If any person wilfully makes or causes to be made any false entry in or any omission from the list required by section 4, or in or from any statement or copy of rules or of alterations in rules sent to the Inspector-General of Registration under section 4A, he shall be punished with fine which may extend to two thousand rupees.

22. *Trial of offences.*—No Court inferior to that of a Magistrate of the first class shall try any offence under this Act."

[*Vide* Bihar Act IV of 1951, sec. 3 (w.e.f. 7-3-1951); Act 19 of 1956, sec. 8 (w.r.e.f. 21-12-1955).]

After section 22, add the following sections, namely:—

"23. *Cancellation of registration in certain cases.*—(1) Notwithstanding anything contained in this Act the Inspector-General of Registration may, by order in writing, cancel the registration of any society registered under this Act whose office has ceased to be in the State of Bihar by reason of the reorganisation of States or change of the office from the State of Bihar to another State, or whose activities are subversive to the objects of the society:

Provided that the Inspector-General of Registration shall, before passing an order, make such inquiry as he considers necessary:

Provided further that no order of cancellation of registration of any society on the ground of the activities of the society being subversive to the objects of the society shall be passed until the society has been given a reasonable opportunity of showing cause against action proposed to be taken in regard to it.

(2) An appeal against an order made under sub-section (1) may be preferred in such manner, within such time and to such authority, as may be prescribed, and such authority shall consider and dispose of such appeals in the prescribed manner.

(3) The decision of the appellate authority under sub-section (2) shall be final.

24. *Power of the State Government to make rules.*—(1) The State Government may after previous publication make rules not inconsistent with the Act for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the State Government may make rules—

(a) prescribing the form of the Register of Societies and the mode in which entries relating to registration are to be made therein, and the mode in which such entries are to be amended or notices made therein;

(b) regulating the filing of documents received by the Inspector-General of Registration;

(c) prescribing the authority before whom, and the time within which, an appeal shall be preferred under sub-section (2) of section 23 and the manner in which such appeal shall be considered and disposed of;

(d) prescribing conditions for the inspection of original documents;

(e) regularising the grant of copies of documents; and

(f) providing for any other matter for which there is no provision or insufficient provision in this Act and for which provision is, in the opinion of the State Government, necessary for giving effect to the purposes of this Act."

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which, it is so laid or the session immediately following both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall, thereafter have effect, only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

[*Vide* Bihar Act 2 of 1960, sec. 7 (w.e.f. 8-2-1960) and Act 12 of 1963, secs. 2 and 3 (w.e.f. 20-6-1963).]

Gujarat.—(i) After section 20, insert the following section, namely:—

"21. (1) All proceedings under this Act, in its application to the Kutch, Madhya Pradesh and Saurashtra areas of the State of Bombay, pending before the Registrar of Companies immediately before the 1st day of May, 1957 shall stand transferred to the Registrar of Societies and any such proceeding shall be continued and disposed of by such Registrar, as if it had been originally instituted before him under this Act.

(2) In all certificates of registration and in all rules or bye-laws of societies and in other instruments issued or made under this Act before the 1st day of May, 1957, references to the Registrar of Joint-stock Companies or the Registrar of Companies shall be deemed to be and be construed as references to the Registrar of Societies."

[*Vide* Societies Registration Act (Bombay Adaptation) Order, 1957.]

(ii) After section 21, insert following section, namely:—

22. Penalties.—(1) If the President, Secretary or any other person authorised in this behalf by a resolution of the governing body of the society fails to comply with the provisions of section 4, he shall, on conviction, be punished with fine which may extend to five hundred rupees and in the case of a continuing breach, shall also be punished with fine not exceeding fifty rupees for each day, during the period the breach continues after first conviction for such offence.

(2) If any person wilfully makes or causes to be made any false entry in, or any omission from the list required by section 4, or in or from any statement or copy of rules or alterations in rules sent to the Registrar under section 4A, he shall, on conviction, be punished with fine which may extend to two thousand rupees.

23. Trial of offences.—(1) No Court inferior to that of a Magistrate of the first class shall try an offence punishable under this Act.

(2) No Court shall take cognizance of an offence punishable under this Act except upon complaint made by the Registrar or any other person authorised in writing by him in this behalf.

[*Vide* Gujarat Act 14 of 1965, section 3 (w.e.f. 1-5-1966).]

(iii) After section 23, insert the following new section, namely:—

"*24. Power to make rules.*—(1) The State Government may by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may be made for all or any of the matters expressly required or allowed by this Act to be prescribed by rules.

(3) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.

(4) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following.

(5) Any recession or modification so made by the State Legislature shall be published in the Official Gazette and shall thereupon take effect."

[*Vide* Gujarat Act 17 of 1978, secs. 13 and 14 respectively (w.e.f. 4-4-1979).]

Sections 20A to 22

Maharashtra.—(i) After section 20, insert following sections, namely:—

"**[20A.] Definition of special society.*—For the purposes of this Act, 'a special society' means a society formed for the purposes of the Maharashtra Educational Institutions (Transfer of Management) Act, 1971.

**[20B.] Power to modify Act in relation to special societies.*—(1) The State Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification—

(a) shall not apply to a special society; or

(b) shall apply to the special society with such exceptions, modifications and adaptations as may be specified in the notification.

(2) A copy of every notification proposed to be issued under sub-section (1) shall be laid in draft before both the Houses of the Legislature of the State for a period of not less than thirty days while they are in session, and if within that period, either House disapproves of the issue of the notification or approves of such issue only with modifications, the notification

shall not be issued or, as the case may require, shall be issued only with such modifications as may be agreed on by both the Houses.

*[Sections 21 and 22 were inserted by Maharashtra Act 49 of 1971, sec. 17 (w.e.f. 1-4-1973) and were renumbered as sections 20A and 20B by Maharashtra Act 11 of 1976, sec. 39 and Sch. II (w.e.f. 14-4-1993).]

(ii) After section 20, insert the following section, namely:—

"21. *Pending proceedings and construction of references to Registrar of Companies in instruments issued or made before 1st May, 1957 in Kutch, Madhya Pradesh or Saurashtra area of Bombay State.*—(1) All proceedings under this Act in its application to the Kutch, Madhya Pradesh and Saurashtra areas of the State of Bombay, pending before the Registrar of Companies immediately before the 1st day of May, 1957, shall stand transferred to the Registrar of Societies and any such proceeding shall be continued and disposed of by such Registrar, as if it had been originally instituted before him under this Act.

(2) In all certificates of registration and in all rules or bye-laws of societies and in other instruments issued or made under this Act before the 1st day of May, 1957, references to the Registrar of Joint-Stock Companies or the Registrar of Companies shall be deemed to be and be construed as reference to the Registrar of Societies."

[*Vide* Societies Registration Act (Bombay Adaptation) Order, 1957 (w.e.f. 1-5-1957).]

(iii) After section 21, insert the following, namely:—

"22. *Rules.*—(1) The State Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act."

(2) Same as sub-section (3) of section 24 in Bihar.

[*Vide* Maharashtra Act 1 of 1968, sec. 9 (w.e.f. 1-10-1968).]

Sections 21 to 25

Pondicherry.—After section 20, insert the following sections, namely:—

"21. *Inspection and Investigation.*—(1) Every society shall be inspected at least once in two years by the Registrar or an officer authorised by him in his behalf who shall be entitled to inspect the premises of any society and shall also be entitled to call for such information or explanation within such time as may be specified.

(2) Where it appears to the Registrar that the affairs of a society call for investigation, the Registrar may appoint a certified officer to investigate the affairs of such society and may fix his remuneration which shall be borne by the society.

22. *Defunct action.*—Where default is made by a society in filing with the Registrar any change in the Memorandum of Association (or in filing with him the returns required by sections 4 and 4A), the Registrar may, after calling upon such society to furnish details of such change (or to submit such returns) within a specified time and on the failure of the society to do so, treat the society as having become defunct (and cause a notification of such decision to be published in the Official Gazette), whereupon the incorporation of the society under this Act shall cease:

Provided that the liability, if any, of the members of the governing body or members of the society, as the case may be, shall continue and may be enforced as if the society had not become defunct.

23. *Penalties.*—If any person wilfully makes or causes to be made any false entry in, or any omission from, the list required by section 4, or in or from any statement or copy of rules or of alterations in rules sent to the Registrar of Companies under section 4A, he shall, on conviction, be punishable with fine which may extend to two thousand rupees.

24. *Cognizance of offences.*—No Court inferior to that of a Magistrate of the first class shall try any offence punishable under this Act, nor shall cognizance of any such offence be taken except on a complaint in writing by the Registrar or any person authorised by him in writing in this behalf.

25. *Power to make rules.*—(1) The Government may make rules for carrying out the purposes of the Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

(a) the maintenance of the register of societies and other books, if any, by the Registrar;

(b) the forms under which the Registrar shall issue certificates of registration of a society, change of name, etc.;

(c) the forms and notices under which every society shall intimate the Registrar regarding the amendments to its memorandum or rules and regulations; and

(d) any other matter which is to be or may be prescribed.

(3) All rules made under this Act shall, as soon as may be after they are made, be laid before the Legislative Assembly, Pondicherry, while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, the Assembly makes any modification in the rule or decides that the rule should not be made, the rules shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

[*Vide* Pondicherry Act 9 of 1969, sec. 10 (w.e.f. 1-1-1970).]

Sections 21 to 33

Uttar Pradesh.—For section 21, substitute the following section, namely:—

'21. In this Act, the word "Registrar" means a person appointed as such by the State Government, and includes any Additional Registrar, a Joint Registrar, Deputy Registrar, or Assistant Registrar, on whom all or any of the powers of the Registrar under this Act are conferred by general or special order of the State Government.'

[*Vide* Uttar Pradesh Act 26 of 1979, sec. 7 (w.e.f. 16-7-1979). Section 21 was previously added by Uttar Pradesh Act 25 of 1958, sec. 3 (w.e.f. 25-8-1958).]

(ii) After section 21, insert following sections, namely:—

'22. *Power of Registrar to call for information.*—(1) The Registrar may, by written order, require any society to furnish in writing such information or document within such time, being ordinarily not less than two weeks from the date of receipt of the order by the society, as he may specify in the order in connection with the affairs of the society or any documents filed by the society under this Act.

(2) On receipt by the society of an order under sub-section (1), it shall be the duty of the President, Secretary or any other person authorised in this behalf to furnish such information or documents.

23. *Audit.*—Without prejudice to the provisions of sub-section (2) of section 4 or of section 22, where the Registrar is of opinion that it is necessary or expedient so to do, he may, by written order, require any society to furnish its accounts or a copy of a statement of receipts and expenditure for any particular year duly audited by a Chartered Accountant:

Provided that the Registrar may, at the request of society permit it to have such accounts and statement audited by any other person approved by him.

(2) If the society fails to furnish the documents referred to in sub-section (1) within the period specified in the order or within such extended period as the Registrar may from time to time allow, the Registrar may cause the accounts of such society audited for the said year and may recover the cost of such audit from that society.

(3) If the society neglects or refuses to make its accounts or other documents available for audit under sub-section (2) or, in the opinion of the Registrar, otherwise fails to provide requisite facilities to have the audit made with due expedition, the Registrar may proceed to take action under section 24.

24. *Investigation of affairs of a society.*—(1) Where on information received under section 22 or otherwise, or in circumstances referred to in sub-section (3) of section 23, the Registrar is of opinion that there is apprehension that the affairs of a society registered under this Act are

being so conducted as to defeat the objects of the society or that the society or its governing body, by whatever name called, or any officer thereof in actual effective control of the society is guilty of mismanaging its affairs or of any breach of fiduciary or other like obligations, the Registrar may, either himself or by any person appointed by him in that behalf, inspect or investigate into the affairs of the society or inspect any institution managed by the society.

(2) It shall be the duty of every officer of the society when so required by the Registrar or other person appointed under sub-section (1) to produce any books of account and other records of or relating to the society which are in his custody and to give him all assistance in connection with such inspection or investigation.

(3) The Registrar or other person appointed under sub-section (1) may call upon and examine on oath any officer, member or employee of the society in relation to the affairs of the society and it shall be the duty of every officer, member or employees, when called upon, to appear before him for such examination.

*[(3A) The Registrar or other person appointed under sub-section (1), may, if in his opinion it is necessary for the purpose of inspection or investigation, seize any or all the records including account books of the society:

Provided that any person from whose custody such records are seized shall be entitled to make copies thereof in the presence of the person having the custody of such records.]

(4) On the conclusion of the inspection or investigation, as the case may be, the person if any appointed by the Registrar to inspect or investigate shall make a report to the Registrar on the result of his inspection or investigation.

(5) The Registrar may, after such inspection or investigation, give such directions to the society or to its governing body or any officer thereof, as he may think fit, for the removal of any defects or irregularities, within which as may be specified and in the event of default in taking action according to such directions, the Registrar may proceed to take action under section 12D or section 13B, as the case may be.

[*Ins. by Uttar Pradesh Act 11 of 1984, sec. 8 (w.e.f. 30-4-1984).]

25. Dispute regarding election of office-bearers.—(1) The prescribed authority may, on a reference made to it by the Registrar or by at least one-fourth of the members of a society registered in Uttar Pradesh, hear and decide in a summary manner any doubt or dispute in respect of the election or continuance in office of an office-bearer of such society, and may pass such orders in respect thereof as it deems fit:

†[Provided that the election of an office-bearer shall be set aside where the prescribed authority is satisfied—

(a) that any corrupt practice has been committed by such office-bearer; or

(b) that the nomination of any candidate has been improperly rejected; or

(c) that the result of the election in so far as it concerns such office-bearer has been materially affected by the improper acceptance of any nomination or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with the provisions of any rules of the society.

Explanation I.—A person shall be deemed to have committed a corrupt practice who, directly or indirectly, by himself or by any other person—

(i) induces, or attempts to induce, by fraud, intentional misrepresentation, coercion or threat of injury, any elector to give or to refrain from giving a vote in favour of any candidate, or any person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate at the election;

(ii) with a view to inducing any elector to give or refrain from giving a vote in favour of any candidate, or to inducing any person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at the election, offers or gives any money, or valuable consideration, or any place or employment, or holds out any promise of individual advantage or profit to any person;

(iii) abets (within the meaning of the Indian Penal Code) the doing of any of the acts specified in clauses (i) and (ii);

(iv) induces or attempts to induce a candidate or elector to believe that he or any person, in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure;

(v) canvasses on grounds of caste, community, sect or religion;

(vi) commits such other practice as the State Government may prescribe to be a corrupt practice.

Explanation II.—A promise of individual advantage or profit to a person includes a promise for the benefit of the person himself or of any one in whom he is interested.

Explanation III.—The State Government may prescribe the procedure for hearing and decision of doubts or disputes in respect of such elections and make provision in respect of any other matter relating to such elections for which insufficient provision exists in this Act or in the rules of the society.]

[†Ins. by Uttar Pradesh Act 13 of 1978, sec. 4 (w.r.e.f. 27-2-1978).]

(2) Where by an order made under sub-section (1), an election is set aside or an office-bearer is held no longer entitled to continue in office or where the Registrar is satisfied that any election of office-bearers of a society has not been held within the time specified in the rules of that society, he may call a meeting of the general body of such society for electing such office-bearer or office-bearers, and such meeting shall be presided over and be conducted by the Registrar or by any officer authorised by him in this behalf, and the provisions in the rules of the society relating to meetings and elections shall apply to such meeting and election with necessary modifications.

(3) Where a meeting is called by the Registrar under sub-section (2), no other meeting shall be called for the purpose of election by any other authority or by any person claiming to be an office-bearer of the society.

Explanation.—For the purposes of this section, the expression "prescribed authority" means an officer or Court authorised in this behalf by the State Government by notification published in the Official Gazette.

26. *Terms of gift to be observed.*—Where a society accepts a gift or donation of money or property of any other kind from any person for a specific purpose, it shall not use the money or other property gifted or donated or any part thereof for any other purpose without the written consent of the Registrar who shall refuse such consent except when he is satisfied that the purpose for which the gift was made is incapable of execution by the society.

27. *Penalties.*—Any person who—

*[(a) fails to furnish the list of managing body or other information required to be furnished under section 4 or 4 A or wilfully makes or causes to be made a false entry in, or any omission from, the list or any statement or copy or rules or of alteration in rules or other information sent to the Registrar under the said section 4 or section 4A.]

(b) wilfully fails to furnish any account or statement referred to in sub-section (1) of section 23 or furnishes in compliance with the said sub-section particulars which are false and which he either knows or believes to be false or does not believe to be true;

(c) neglects or refuses to make its accounts or other documents available for audit as required by sub-section (3) of section 23;

(d) wilfully fails to produce any books of accounts or other records as required by sub-section (2) of section 24;

(e) wilfully fails to appear before the Registrar or other person appointed by him or otherwise contravenes the provisions of sub-section (3) of section 24;

shall be punishable with fine which may extend to two thousand rupees.

[* Subs. by Uttar Pradesh Act 11 of 1984 (w.e.f. 30-4-1984).]

28. *Procedure.*—No Court inferior to that of a Magistrate of the first class shall try an offence punishable under this Act nor shall cognizance of any such offence be taken except on a complaint made by the Registrar or any other person authorised in writing by him by general or special order in that behalf.

29. Compounding of offences.—(1) The Registrar may accept from any person against whom a reasonable suspicion exists that he has committed any offence punishable under section 27 or against whom a prosecution under that section has been instituted, a sum of money by way of composition fee for the offence which such person is suspected or accused to have committed.

(2) On the payment of such composition fee the suspected person if in custody, shall be discharged and no further proceeding shall be taken against him, and if prosecution of such person had been instituted, the composition shall have the effect of his acquittal.

30. Manner of payment of fees.—Fees payable under the provisions of this Act shall be paid in such manner as may be prescribed by rules.

31. Indemnity.—No suit, prosecution or other legal proceeding shall lie in any Court against the State Government, the Registrar or against any person appointed for inspection or investigation under section 24, for anything in good faith done or intended to be done under this Act or the rules made thereunder.

32. Mode of service of notice, etc. by Registrar.—(1) Any notice, order or requisition meant for a society or for the governing body thereof to be issued by the Registrar may be served on the Secretary of the Society and service on the Secretary be as effectual as if the same had been served on every member of the society or, as the case may be, on every member of the governing body thereof, unless the Registrar otherwise directs.

(2) The sending of such notice, order or requisition to the Secretary of the society by registered post at its registered office shall amount to sufficient service thereof on the society.

33. Power to make rules.—(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) All rules made under this Act shall, as soon as may be after they are made, be laid before each House of the State Legislature while it is in session, for a total period of thirty days extending in its one session or more that one successive sessions and shall unless some later date is appointed, take effect from the date of their publication in the Official Gazette, subject to such modifications or annulments as the two Houses of the Legislature may, during the said period agree to make; so however, that any such modification or annulment shall be without prejudice to validity of anything previously done thereunder.'

[*Vide* Uttar Pradesh Act 52 of 1975, sec. 12 (w.e.f. 10-10-1975).]



18

FORMAT OF MEMORANDUM OF ASSOCIATION OF A SOCIETY

1. Name of the society

The name of the society shall be ....

2. Registered Office

Registered Office of the society shall remain in the .... (mention here State) and at present it is at the following address:

3. Aims and objects

The aims and objects for which the society is established are as under:

(a)

(b)

(c)

(d)

"All the incomes, earnings, movable or immovable properties of the society shall be solely utilized and applied towards the promotion of its aims and objects only as set forth in the Memorandum of Association and no portion thereof shall be paid or transferred directly or indirectly by way of dividends, bonus, profit or in any manner whatsoever, to the present or past members of the society or to any person claiming through any one or more of the present or the past members. No member of the society shall have any personal claim on any movable or immovable properties of the society or make any profit, whatsoever, by virtue of his membership".

4. Governing Body

The names, addresses, occupation and designation of the present members of the governing body to whom the management of the society is entrusted as required under section 2 of the Societies Registration Act, 1860, are as follows:—

S. No.	Name (full in capital)	Addresses	Occupation	Designation in the society
(1)				
(2)				
(3)				
(4)				
(5)				
(6)				
(7) & so on				

5. Desirous person

We the undersigned are desirous of forming a society namely "......................" under the Societies Registration Act, 1860 in pursuance of this Memorandum of Association of the Society.

S. No.	Name & Addresses	Occupation	Signature
(1)			
(2)			
(3)			
(4)			
(5)			
(6)			
(7) & so on			

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19

Model Objects of Animal Welfare Society for Care and Well-being of Buffaloes, Cows, Donkeys and Load Bearing Animals

The objects of the society are as follows:

- The preservation and care of buffaloes, cows, donkeys and load bearing animals.
- The preservation and expansion of habitat for buffaloes, cows, donkeys and load bearing animals.
- The collection of information for research relating to habitat, disease, nutrition and habits of buffaloes, cows, donkeys and load bearing animals.
- To rescue and treat sick and injured buffaloes, cows and donkeys and to record details and case histories.
- To provide educational instructional material to increase public awareness of all aspects of the life of load bearing animals and beasts of burden.
- Protection of buffalo, cow and donkey populations through liaison with local councils, State authorities, Wildlife Service, government and private property owners.



20

Model Objects of a Hospital Registered as Society

The objects of the society shall be:

(i) To erect, maintain, administer and endow a private general hospital or hospitals, and to provide related services and facilities.

(ii) To exercise and perform all necessary duties, functions and obligations with regard to such hospital or hospitals, and to the nursing and treatment of the sick or infirm.

(iii) To promote the understanding of mental health and services for those with mental illness and disability.

(iv) To carry out medical research by engaging in the research and development of all fields of medical sciences, and in all therapies of medical treatment, so as to afford medical relief in a better way.

(v) To provide research facilities for carrying on research, basic and applied, in all systems and disciplines of medical and surgical knowledge, keeping in view the socio-medical and socio-economic needs of the afflicted community.

(vi) To found, establish or take-over and/or otherwise conduct research institutions in all disciplines of medical and surgical knowledge.

(vii) To encourage and develop biological and pharma-cological standardization of indigenous medicinal plants.

(viii) To encourage the discovery of new medical and/or surgical management of diseases and afflictions and to investigate and make known the nature and merits of investigations and findings and research in the said field and to acquire any patent and licences or other protective devices relating to the results of any discovery, investigations, findings or researches and to acquire any processes upon such terms as to manufacture and distribute for charitable purposes of any product developed, discovered or improved.

(ix) To provide, encourage, initiate or promote facilities for the discovery, improvement or development of new methods of diagnosis, understanding and prevention and treatment of diseases.

(x) To conduct and to carry on experiments and medical research.

(xi) To apply any profits accruing from the activities or work of the Society to the furtherance of its charitable objects.

(xii) To carry out the charitable objects of the Society either along, or in association with such other person, corporation, body or trust as may be approved by the society.

(xiii) To enter into any form of contractual arrangement, with any other entity for the purpose of carrying out the objects of the Society.



21

MODEL OBJECTS OF AN EDUCATIONAL SOCIETY

Aims and objects of the society, shall be:

(i) To establish, run, take over or manage, erect, equip and maintain or contribute towards establishments, erection, equipment and maintenance of schools, bal-mandirs, libraries, free-reading rooms faculties, departments, chairs, lectureships, fellowships, institutes and programs of study with an object to provide sound pre-primary, primary, middle, secondary, senior secondary and higher education to children by seeking recognition and to give instruction and training in all branches of knowledge and learning.

(ii) To arrange and manage the training institutions in Typing, Short Hand, Computer, Fine Arts, Crafts, Music, Painting, Modelling, Dancing, Yoga, Physical Education and in other professional training subjects.

(iii) To conduct research in education and other disciplines on the different subjects relating to education.

(iv) To promote literacy, cultural and other social activities by Awareness Programmes, Adult Education Classes, Lectures, Essay Competitions, Exhibitions, Symposiums, Cultural Programmes, Press Conferences and Seminars.

(v) To provide foods, cloths, medical aid, stationery, transportation, libraries, laboratories, reading rooms, hostels, play grounds, swimming pool and other possible facilities to the students and also to the members of the society.

(vi) To promote prizes, scholarships, exhibitions, bursaries and funds for the purpose of promoting and improving the education of all branches of knowledge and learning.

(vii) To engage, employ or hire appropriate staff, workers, legal experts and other professionals, attorneys, managers and agents for the work and furtherance of the aims and objects of the society and to pay their wages, salaries, stipends or fees.

(viii) To arrange and organise various kinds of Child Welfare Programmes/ Activities.

(ix) To purchase/acquire the land and/or the building in the name of the society and make construction thereupon.

(x) To facilitate the exchange of ideas and knowledge between members and the Soicety, and the community in general by holding lectures, seminars, discussion groups or other means, to establish and maintain libraries of pertinent publications.

(xi) To pay tution fees, examination fees, boarding and lodging fees to deserving students and to supply books free of cost to such students.

(xii) To do such other things/acts/activities which are necessary and which may be incidental or conducive to the attainment of any of the object of the society.

(xii) All the activities shall be Non-Profitable and shall be done on 'No Profit-No Loss' basis.

(xiv) All the incomes, earnings, movable/immovable properties of the society shall be solely utilized and applied towards the promotion of its Aims and Objects only as set forth in the Memorandum of the society and no profit thereof shall be paid or transferred directly or indirectly by way of dividends, bonus, profits or in any manner whatsoever to the present or the past members of the society or to any person claiming through any one or more of the present or the past members. No member of the society shall have any personal claim on any movable or immovable properties of the society or make any profits, whatsoever, by virtue of this membership.



PART G
TRUST

22

THE INDIAN TRUSTS ACT, 1882

INTRODUCTION

It should not be understood that trust was unknown to the genius of the people of India or that problems relating to trusts only rarely arose for decision in one court. The idea of dual ownership involved in the technical sense of a trust as known to English law was no doubt foreign to India but trusts in the wider sense of property or the control of it being vested in one person annexed with an obligation to use it for the benefit of another was familiar to Hindu life and thought. After the establishment of British Rule in India *benami* transaction came to be noticed as early as the year 1778. There was no comprehensive enactment in India governing private trusts but there were only some piecemeal provisions. The Indian Trustees Act XXVII of 1866 and the Trustees and Mortgagees Powers Act, 1866, since repealed were expressly made applicable to cases governed by English law but they were not complete provisions. The Statute of Frauds (29 Car. II, c. 3) requiring trusts relating to immovable property to be evidenced in writing was in force in the Presidency Towns. The Indian Penal Code (XLV of 1860) dealt with offences relating to trusts and punishments for such offences. The Code of Civil Procedure (X of 1877) prescribed the procedure for actions relating to trusts. The Specific Relief Act, 1877 (1 of 1877) contained provisions enabling recovery of possession of specific movable property by a trustee from a third person and by a beneficiary from the trustee. The Limitation Act XV of 1877 prescribed periods of limitation for recovery of property conveyed away by trustees in breach of trust. The question of enacting a law relating to trusts was one of the matters referred to the Indian Law Commission of 1879 which reported on the advisability of the Codification of Trust Law. Thus the Indian Trusts Bill was introduced in the Legislature.

Statement of objects and Reasons

Trusts in the strict sense in which that term is used by English lawyers, that is to say, confidences to the existence of which a 'legal' and an 'equitable' estate are necessary, are unknown to Hindu and Muhammadan Law. But trusts in the wider sense of the word, that is to say, obligations annexed to the ownership of property which arise out of a confidence reposed in and accepted by the owner for the benefit of another, are constantly created by the natives of India and are frequently enforced by our courts. 'There is probably' says Justice Phear, 'no country in the world where fiduciary relations exhibit themselves so extensively and in such varied forms as in India, and possession of dominion over property, coupled with the obligation to use is, either wholly or partially, for the benefit of other than the possessor, is, I imagine, familiar to every Hindu.' So, too, in the case of Muhammadans, where a woman is entitled to a share of her deceased father's estate in the hands of her brother or to exigible dower in the hands of her husband. Trusts created by an old man for his own maintenance and ulterior purposes, for a widow, for a daughter, step-daughter or daughter-in-law and her children are of pretty frequent occurrence amongst the natives, whether Hindu or Muhammadan, and it is desirable to keep them free from the complication of double estates in which, without the intervention of the Legislature, they are certain to become entangled. But apart from

the native property-holder, there is the large body of domiciled Europeans and Eurasians who have for nearly a century enjoyed and taken advantage of a trust law recognised by our courts: the number and wealth of this class have increased, and in suits between members of this community every court in the country may be called upon to administer a trust law. Nevertheless, with the exception of certain provisions in the Penal Code, the Specific Relief Act, the Code of Civil Procedure and the Limitation Act, the Indian Statute Book is silent on the subject so far as regards the bulk of the population; for the Statute of Frauds, sections 7 to 11, is in force only in the Presidency towns, and the rules contained in Acts XXVII and XXVIII of 1866 extend only to cases to which English law is applicable, and are, in themselves, incomplete.

The object of the present Bill is to codify the law relating to trusts in the wider sense above discribed; but it saves the rules of Muhammadan law as to *waqf*, and the mutual relations of the members of an undivided family, and it leaves untouched religious and charitable endowments established by Hindus and Buddhists, as being matters in which the Legislature cannot at present usefully interfere further or otherwise than has been done by Act XX of 1863.

With the few exceptions mentioned in this statement the rules contained in the Bill are substantially those now administered by English Courts of Equity and (under the name of justice, equity and good conscience) by the courts of British India.

The Bill distributes the subject under the following heads : (i) Preliminary; (ii) The creation of trusts; (iii) The duties and liabilities of trustees; (iv) Their rights and powers; (v) Their disabilities; (vi) The rights and liabilities of the beneficiary; (vii) Vacating the office of trustee; (viii) The extinction of trusts; and (ix) Certain obligations in the nature of trusts.

The preliminary Chapter, in order to prevent the introduction of conceptions resembling the English legal estate and equitable ownership, defines the interest of the beneficiary as his right against the trustee as owner of the property. The beneficiary has, under the Bill, no estate or interest in the subject-matter of the trust. The Bill also defines "breach of trust" as a breach of any duty imposed on a trustee as such, by any law for the time being in force, and declares that a person has 'notice' of a fact when he actually knows that fact, or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information is given to, or obtained by, his agent under the circumstances mentioned in the Contract Act, section 229.

The Second Chapter deals with the creation of trusts. It declares that a trust may be created for any 'lawful purpose' and as there is a general analogy between a trust and contract, the bill defines such purpose to be lawful in the cases in which the Indian Contract Act, section 23, declares object of an agreement to be lawful. An explanation shows that where trust property is land situate in a foreign country, the trust, to be valid, must not create an estate not recognised by the law of that country.

The expediency of excluding oral declarations of trust has long been felt in the case of land, and the Bill (section 5) lays down, in general in accordance with the seventh section of the Statute of Frauds, that no trust in relation to immovable property is valid, unless declared (a) by a non-testamentary instrument in writing signed by the author of the trust or the trustee, and registered, or (b) by the Bill of the author of the trust or of the trustee, and that no trust in relation to movable property is valid unless declared, as aforesaid, or unless the ownership of the property is transferred to the trustee. Theoretically, this will modify the Hindu law, which in no transaction absolutely requires a writing; but trusts by merely verbal declaration are as rarely met with as mortgages by merely verbal agreements: the proposed change will, therefore, in practice make no alteration in that law. The rule will not apply where it would operate so to effectuate a fraud, as for example, where a father having power to bequeath certain land is induced not to make a will of that land by the promise of his heir-presumptive that he will provide thereout for his relatives.

Section 8 declares that the subject-matter of a trust must be property transferable to the beneficiary, and that it must not be merely beneficial interest under a subsisting trust. The object of the latter provision is to preclude the complications that would arise from allowing a trust upon a trust.

Section 9 declares that every person capable of holding property may be a beneficiary. As, under Act I of 1868 person includes a corporation. The Bill here varies from English law. But the variation is international, as it has been more than once ruled that the Mortmain Statutes are not in force in India.

Chapter III deals with a trustee's duties and liabilities. None of the rules here contained calls for remark except sections 20 and 23. Section 20 given a list of the securities on which alone a trustee may invest trust funds. The necessity for some such provision has been indicated by the High Court of Bombay in *De Sauza* v. *De Souza,* Investments on mortgages of leaseholds for years are forbidden, unless of course such securities are expressly authorised by the instrument of trust. In England, no doubt, trustees, authorised to lend on a mortgage realty may invest on a long-term of years at a peppercorn rent. But in this country such terms are practically unknown. Section 20 also allows a trustee to deposit a trust fund not exceeding Rs. 1,000 in a Government Savings Bank and to interest on mortgage of land already pledged as security for an advance under the Land Improvement Act, 1871. A power like the latter is conferred in England by 27 and 28 Vic., c. 174, section 161. Section 23 declares the measures of the trustee's liability in case of a breach of trust, and embodies, as illustrations, the rules on which courts of equity act where trust property improperly left outstanding is lost, or where a trustee retains money which should be invested, or neglects a direction to invest, or to accumulate, or improperly sells trust securities or is guilty of unreasonable delay in investing trust funds or in paying them to the beneficiary.

Chapter IV treats of the rights and powers of trustees. It embodies the substance of Act XXVIII of 1866, sections 2, 3, 5, 32, 36, 37, 39 and 43. Section 34 of the Bill empowers trustees to apply, not only to High Court Judges, but to District Judges, for advice on simple questions respecting the management and administration of the trust property. Under section 36, which deals with the general authority of a trustee, trustee will be able (unless restrained from doing so by the instrument of trust) to grant reasonable agricultural leases, thin timber and otherwise act for the benefit of the trust. Except with the permission of the court, no trustee will be able to lease trust property for a term exceeding 21 years.

Chapter V deals with disabilities of the trustee. The only section here calling for remarks is 52, which declares that no trustee and no person who has recently ceased to be a trustee, may, without the permission of the court, buy the interest of the beneficiary in the trust property, and that such permission shall not be given unless the purchase is manifestly for the benefit of the latter. The Bill here deviates from the present law according to which a trustee is allowed to buy trust property from his beneficiary if the latter is *sui juris* and the former can show that the relation of trustees and beneficiary was, at the time of purchase, virtually dissolved, and that the fullest information and every advantage were given to the beneficiaries. Such a rule seems too vague for insertion in a Code intended to be worked, for the most part, by unprofessional Judges; it has, moreover, been disapproved in *Morse* v. *Royal.*

In the next Chapter—of the rights and liabilities of the beneficiary—the only sections requiring special notice are sections 58 and 60. The former provides for the execution of trusts by the court, and makes no distinction between the cases where the declaration of trust is complete and those where the trust is executory, *i.e.*, where the declaration of trust is intended to be perfect at some future period.

The latter section declares that all persons taking immovable trust property inconsistently with the trust hold it subject to the trust, except (a) purchasers in good faith for consideration without notice of the trust, and (b) purchasers for consideration

from such purchasers. This agrees with the English rule which, to prevent stagnation of property, exempts from the trust a purchaser with notice from an innocent purchaser without notice, who has got the legal estate.

Chapter VII treats of vacating the office of trustee, and, incidentally deals with the appointment of new trustees, and declares that on the death or discharge of one of several co-trustees, the trust survives and, the trust property passes to the others, unless the instrument of trust expressly declares otherwise.

Chapter VIII treats of the extinction of trusts and, incidentally, of their revocation.

Where no trust is declared, but for the purpose of justice the law deems one to have been created, the trust is by English lawyers termed constructive. *Benami* transactions, where property is transferred to A for a consideration paid by B and B makes the payment for his own benefit, have for centuries been familiar to the people of India; gains made by one person at the cost of another are an everyday source of litigation; and in no country, owing to the extreme sub-division of immovable property and the partition of inheritances, are constructive trusts more common. Chapter IX avoids the fiction implied in the term 'constructive trust' by treating such confidences as obligations in the nature of trust property so called. It specifies the fourteen principal cases in which such an obligation arises, as follows:—

(1) Where it does not appear that the transferor of property intended to dispose of the beneficial interest (section 80);

(2) Where property is transferred to one person for a consideration paid by another (section 81).

(3) Where the trust is incapable of execution or is executed without exhausting the property (section 82).

(4) Where a transfer of property is made for an illegal purpose (section 83).

(5) Where a bequest is made for an illegal purpose, or where the revocation of a bequest is forcibly prevented (section 84).

(6) Where a transfer is made in pursuance of a rescindable contract (section 85).

(7) Where a transfer is made in fraud of the transferee's creditors (section 86).

(8) Where a debtor becomes his creditor's legal representative (section 87).

(9) Where a pecuniary advantage is gained by a person in a fiduciary character (section 88).

(10) Where an advantage is gained by the exercise of undue influence (section 89).

(11) Where an advantage is gained by a tenant for life or other persons interested in the property (section 90)

(12) Where property is acquired with notice of an existing contract affecting in (section 91).

(13) Where a person contracts to buy property to be held on trust (section 92).

(14) Where one of several compounding creditors, by a secret arrangement with the debtor, gains an advantage over his co-creditors (section 93).

The Bill also contains a general clause (section 94 providing for cases not so specified. It is believed that this clause will cover that form of constructive trust which the Punjab Courts have held to arise when a co-sharer in a village community absents himself without expressly abandoning his rights.

The Bill declares that, in the case of all obligations in the nature of a trust, the obligor shall be subject to the liabilities and (with the two exceptions mentioned in section 95), to the disabilities of an ordinary trustee.

Three only of the obligations above specified seem to require further notice. The Bill, it will be seen, does not attempt to suppress the inveterate practice of entering into *benami*

transactions, and it must be admitted that in many, perhaps most, of these transactions the parties are actuated by religious or prudential, rather than fraudulent motives. Section 81, accordingly, declares that where property is transferred to one person for a consideration paid by another, and it appears that the latter did not intend to pay the consideration for the benefit of the former, the transferee must hold the property for the benefit of the person paying. Resulting trustes, *i.e.*, those that arise where an interest is given for purposes to which the trust is not commensurate (as, for instance, to pay debts which are satisfied, or an annuity which expires), are treated (section 82) as constructive, for here there is no declaration of trust as to the portion of the trust property which is not required for the purpose declared. Section 86 corresponds with 13 Eliz., c. 5 as to settlements intended to defraud creditors. The Statute is in force in the Presidency towns, and its principle has been held by the Madras High Court to apply to natives in the mufassal.

Where a person gives property to charitable purposes, and either specifies no objects or such as do not exhaust the proceeds, the law, as it stands, does not suffer the property or its surplus to result to the donor or his representative; but the court takes upon itself to execute the donor's intention by declaring the particular purpose to which the fund shall be applied. A similar exception is made when the purposes of the gift at the time exhaust the whole proceeds, but in consequence of an increase in the value of the property an excess of income subsequently arises. The Bill ignores these exceptions which were introduced when the law of resulting trusts was imperfectly understood, and which unfairly disregarded the interest of the legal representative.

Lastly, it may be remarked that the Bill contains no provisions as to the presumption against trustees that advantages gained by them from their beneficiaries are gained by undue influence, or as to the escheat of a beneficiary's interest. The former matter is sufficiently provided for by the Evidence Act 1 of 1872, section 111, the latter, by the Succession Act X of 1865, and the general law as to *bona vacantia*.

The Bill is now published as entitled by the Indian Law Commission and in accordance wth the Legislative despatch of the Secretary of State, No. 37, dated 7th October, 1889.

ACT 2 OF 1882

The Indian Trusts Bill having been passed by the Legislature received its assent on 13th January, 1882. It came into force on the 1st day of March, 1882 as THE INDIAN TRUSTS ACT, 1882 (2 of 1882).

LIST OF AMENDING ACTS AND ADAPTATION ORDERS

1. The Amending Act, 1891 (12 of 1891).
2. The Indian Trusts (Amendment) Act, 1908 (3 of 1908).
3. The Indian Trusts (Amendment) Act, 1916 (1 of 1916).
4. The Indian Trusts (Amendment) Act, 1917 (21 of 1917).
5. The Repealing and Amending Act, 1920 (31 of 1920).
6. The Repealing and Amending Act, 1925 (37 of 1925).
7. The Indian Trusts (Amendment) Act, 1934 (18 of 1934).
8. The Government of India (Adaptation of Indian Laws) Order, 1937.
9. The Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.
10. The Adaptation of Laws Order, 1950.
11. The Part B States (Laws) Act, 1951 (3 of 1951).
12. The Trust Laws (Amendment) Act, 1975 (16 of 1975).
13. The Benami Transactions (Prohibition) Act, 1988 (45 of 1988).

THE INDIAN TRUSTS ACT, 1882[1]

(2 of 1882)

[*13th January, 1882*]

An Act to define and amend the law relating to Private Trusts and Trustees.

WHEREAS it is expedient to define and amend the law relating to private trusts and trustees; it is hereby enacted as follows:—

CHAPTER I

PRELIMINARY

1. Short title, commencement.—This Act may be called the Indian Trusts Act, 1882, and it shall come into force on the first day of March, 1882.

Local extent.—[2][It extends to [3][the whole of India [4][except the State of Jammu and Kashmir] and] the Andaman and Nicobar Islands, [5][***]; but the Central Government may, from time to time, by notification in the Official Gazette, extend it to [6][the Andaman and Nicobar Islands] or to any part thereof.]

Savings.—But nothing herein contained affects the rules of Mohammedan law as to *waqf*, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or applies to public or private religious or charitable endowments, or to trusts to distribute prizes taken in war among the captors; and nothing in the Second Chapter of this Act applies to trusts created before the said day.

2. Repeal of Enactments.—The Statute and Acts mentioned in the Schedule hereto annexed shall, to the extent mentioned in the said Schedule, be repealed, in the territories to which this Act for the time being extends.

3. Interpretation-clause.—"trust".—A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner:

"author of the trust"; "trustee"; "beneficiary"; "trust property"; "beneficial interest"; "instrument of trust".—The person who reposes or declares the confidence is called the "author of the trust"; The person who accepts the confidence is called the "trustee"; the person for whose benefit the confidence is accepted is called the "beneficiary"; the subject-matter of the trust is called "trust property" or "trust money"; the "beneficial

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1. For Report of the Indian Law Commission on the Private Trusts Bill which they were instructed to consider among others, *see* Gazette of India, 1880, Supplement, p. 104; and for the Statement of Objects and Reasons, *see* Gazette of India, 1880, Pt. V. p. 476; for Report of the Select Committee, *see* Gazette of India, Supplement, 1881, p 766; for further Report of the Select Committee, *see* Gazette of India, Supplement 1882, p. 67; for Proceedings in Council *see* Gazette of India, Supplement, 1881, p. 687; and Gazette of India, Supplement, 1882, p. 68.

   The Act has been extended to Berar by Act 4 of 1941; Dadra and Nagar Haveli by Regulation 6 of 1963, sec. 2 and Sch. 1; Pondicherry by Regulation 7 of 1963, sec. 3 and Sch. 1; and Goa, Daman and Diu by Regulation 11 of 1963, sec. 3 and Sch.

   Act enforced in the State of Sikkim, *vide* S.O. 642(E), dated 24th August, 1984 (w.e.f. 01-09-1984).
2. Subs. by the A.O. 1948 for the first sentence.
3. Subs. by the A.O. 1950 for "all the Provinces of India, except";
4. Subs. by Act 3 of 1951, sec. 3 and Sch., for "except part B States".
5. The words "and Panth Piploda" omitted by the A.O. 1950.
6. Subs. by A.O. 1950, for "either or both of the said Provinces".

interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust property; and the instrument, if any, by which the trust is declared is called the "instrument of trust";

"breach of trust".—A breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust";

"registered", expressions defined in Act 9 of 1872.—And in this Act, unless there be something repugnant in the subject of context, "registered" means registered under the law for the registration of documents for the time being in force; a person is said to have "notice" of a fact either when he actually knows that fact or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Indian Contract Act, 1872, section 229; and all expressions used herein and defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively attributed to them by that Act.

COMMENTS

(i) The act of official trustee in proceeding to demolish the existing structure and to construct a new one on its place, without any prior permission of the High Court amounted to breach of trust. *Held,* he was guilty of breach of trust, though not personally liable having acted honestly, reasonably and; *bona fide Official Trustee of Tamil Nadu* v. *Udavumkarankal,* AIR 1993 SC 1472: 1993 AIR SCW 1345: (1993) 1 SCR 380.

(ii) A trustee may also be a beneficiary, but cannot be the sole beneficiary, since no trust can exist where the entire property is vested in one person; *Re Cook,* (1948) All ER 231.

(iii) A donor may also constitute himself a trustee, and though remaining in possession, may transfer legal possession by declaring his possession as donee's; *Mohamed Bibi* v. *Sulaiman Ahmed,* AIR 1926 Mad 1110.

CHAPTER II

OF THE CREATION OF TRUSTS

4. Lawful purpose.—A trust may be created for any lawful purpose. The purpose of a trust is lawful unless it is (a) forbidden by law, or (b) is of such a nature that, if permitted, it would defeat the provisions of any law, or (c) is fraudulent, or (d) involves or implies injury to the person or property of another, or (e) the Court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

Explanation.—In this section, the expression "law" includes, where the trust property is immovable and situate in a foreign country, the law of such country.

Illustrations

(a) *A* conveys property to *B* in trust to apply the profits to the nurture of female foundings to be trained up as prostitutes. The trust is void.

(b) *A* bequeaths property to *B* in trust to employ it in carrying on a smuggling business and out of the profits thereof to support *A's* children. The trust is void.

(c) A, while in insolvent circumstances, transfers property to *B* in trust for *A* during his life, and after his death for *B*. *A* is declared an insolvent. The trust for *A* is invalid against his creditors.

COMMENTS

It is well settled that the mere fact that a debtor chooses to prefer one creditor to the other either because of the priority of the debt or otherwise, by itself cannot lead to the irresistible inference that the intention was to defeat the other creditors; *Chogmal Bhandari* v. *Dy. Commercial Tax Officer,* AIR 1976 SC 656: (1976) SCR 325: (1976) 3 SCC 1749.

5. Trust of immovable property.—No trust in relation to immoveable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee.

Trust of moveable property.—No trust relating to movable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

These rules do not apply where they would operate so as to effectuate a fraud.

6. Creation of trust.—Subject to the provisions of section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts, (a) an intention on his part to create thereby a trust, (b) the purpose of the trust, (c) the beneficiary, and (d) the trust, property, and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust property to the trustee.

Illustrations

(a) A bequeaths certain property to *B*, "having the fullest confidence that he will dispose of it for the benefit of *C*". This creates a trust so far as regards *A* and *C*.

(b) *A* bequeaths certain property to *B*, "hoping he will continue it in the family". This does not create a trust as the beneficiary is not indicated with reasonable certainty.

(c) *A* bequeaths certain property to *B*, requesting him to distribute it amongst such members of *C's* family as *B* should think most deserving. This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.

(d) *A* bequeaths certain property to *B*, desiring him to divide the bulk of it among *C's* children. This does not create a trust, for the trust property is not indicated with sufficient certainty.

(e) *A* bequeaths a shop and stock-in-trade to *B*, on condition that he pays *A's* debts and a legacy to *C*. This is a condition, not a trust for *A's* creditors and *C*.

COMMENTS

Where a particular clause of the trust deed specifically stated that "upon death of beneficiaries the trustees or heirs of trustees shall convey or transfer the trust property to the then surviving heirs of author's husband", the apex court held that the observations/interpretation by the High Court regarding the expression 'heirs' had limited purpose being only of incidental relevance. There was hardly any room for going beyond the said 'clause' as it was precise and typical enough for the purpose of such circumstances; *Ranjit Kumar Ghosh* v. *Sirish Chandra Bose;* AIR 1994 SC 1254: 1994 AIR SCW 568: 1994 (2) APLJ 41.

7. Who may create trusts.—A trust may be created—

(a) by every person competent to contract,[1] and

(b) with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor;

but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the-trust property.

COMMENTS

Three partners of the firm executed a wakf deed dedicating three-fourths of their shares in the profits of the firm, but it was discovered later on that the property of one of the partners had vested in the Custodian of Enemy Property. It was held that the wakf was void to the extent of his part only, since this part was clearly severable; *Commissioner of Income-tax* v. *Hamdard Dawakhana*, AIR 1960 Punj 219: ILR 1960 Punj 327: (1960) 39 ITR 144.

8. Subject of Trust.—The subject-matter of a trust must be property transferable to the beneficiary.

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1. *See* section 11 of the Indian Contract Act, 1872 (9 of 1872).

It must not be merely beneficial interest under a subsisting trust.

9. Who may be beneficiary.—Every person capable of holding property may be a beneficiary.

Disclaimer by beneficiary.—A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by the setting up, with notice of the trust, a claim inconsistent therewith.

10. Who may be trustee.—Every person capable of holding property may be a trustee; but, where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract.

No one bound to accept trust.—No one is bound to accept a trust.

Acceptance of trust.—A trust is accepted by any words or acts of the trustee indicating with reasonable certainty of such acceptance.

Disclaimer of trust.—Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it, and such disclaimer shall prevent the trust property from vesting in him.

A disclaimer by one of two or more co-trustees vests the trust property in the other or others and makes him or them sole trustee or trustees from the date of the creation of the trust.

Illustrations

(a) *A* bequeaths certain property to *B* and *C*, his executors as trustees for *D*, *B* and *C* prove *A's* will. This is in itself an acceptance of the trust, and *B* and *C* hold the property in trust for *D*.

(b) *A* transfers certain property to *B* in trust to sell it, and to pay out of the proceeds *A's* debts. *B* accepts the trust and sells the property. So far as regards *B*, a trust of the proceeds is created for *A's* creditors.

(c) *A* bequeaths a lakh of rupees to *B* upon certain trusts, and appoints him his executor. *B* severs the lakh from the general assets, and appropriates it to the specific purpose. This is an acceptance of the trust.

CHAPTER III

OF THE DUTIES AND LIABILITIES OF TRUSTEES

11. Trustee to execute trust.—The trustee is bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract.

Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by a principal Civil Court of original jurisdiction.

Nothing in this section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal or manifestly injurious to the beneficiaries.

Explanation.—Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be (a) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust or when such instrument is a will, at the date of his death, and (b) in the case of debts not bearing interest, to make such payment without interest.

Illustrations

(a) *A*, a trustee, is simply authorised to sell certain land by public auction. He cannot sell the land by private contract.

(b) *A*, a trustee of certain land for *X*, *Y* and *Z*, is authorised to sell the land to *B* for a specified sum. *X*, *Y* and *Z*, being competent to contract, consent that A may sell the land to *C* for less sum. *A* may sell the land accordingly.

(c) *A*, a trustee for *B* and her children, is directed by the author of the trust to land, on *B's* request, trust property to *B's* husband, *C*, on the security of his bond. *C* becomes insolvent, and *B* requests *A* to make the loan, *A* may refuse to make it.

COMMENTS

(i) The trust need not be retained in its original form and it can be dissolved, varied, modified or revoked provided all the beneficiaries concerned who are competent to contract give their respective consent to such resort/procedure; *Prince Muffakham Jah Bahadur* v. *H.E.H. Nawab Mir Barkat Ali Khan Bahadur Prince Mukarram Jah*, AIR 1989 AP 68: (1987) 2 APLJ (HC) 462.

(ii) Where the administration of the trust is vested in co-trustees, they all form, as it were, but one collective trustee and must execute the duties of the office in their joint capacity; *R.P. Kapur* v. *K. Educational Trust*, ILR (1982) 1 Del 801.

12. Trustee to inform himself of state of trust property.—A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust-property; to obtain, where necessary, a transfer of the trust property to himself; and (subject to the provisions of the instrument of trust) to get in trust-moneys invested on insufficient or hazardous security.

Illustrations

(a) The trust property is a debt outstanding on personal security. The instrument of trust gives the trustee no discretionary power to leave the debt so outstanding. The trustee's duty is to recover the debt without unnecessary delay.

(b) The trust property is money in the hands of one of two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required.

13. Trustee to protect title to trust property.—A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust property, may be reasonably requisite for the preservation of the trust property and the assertion or protection of the title thereto.

Illustration

The trust property is immoveable property which has been given to the author of the trust by an unregistered instrument. Subject to the provisions of the Indian Registration Act, 1877 (3 of 1877)[1] the trustee's duty is to cause the instrument to be registered.

14. Trustee not to set up title adverse to beneficiary.—The trustee must not for himself or another set up or aid any title to the trust property adverse to the interest of the beneficiary.

15. Care required from trustee.—A trustee is bound to deal with the trust property as carefully as a man of ordinary prudence would deal with such property if it were his own; and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction, or deterioration of the trust property.

Illustrations

(a) *A*, living in Calcutta, is a trustee for *B*, living in Bombay. *A* remits trust-funds to *B* by bills drawn by a person of undoubted credit in favour of the trustee as such, and payable at Bombay. The bills are dishonoured. *A* is not bound to make good the loss.

(b) *A*, trustee of lease-hold property, directs the tenant to pay the rents on account of the trust to a banker, *B*, then in credit. The rents are accordingly paid to *B*, and *A* leaves the money with *B* only till wanted. Before the money is drawn out, *B* becomes insolvent. *A*, having had no reason to believe that *B* was in insolvent circumstances, is not bound to make good the loss.

(c) *A*, a trustee of two debts for *B*, releases one, and compounds the other, in good faith, and reasonably believing that it is for *B's* interest to do so. *A* is not bound to make good any loss caused thereby to *B*.

1. *See* now the Indian Registration Act, 1908 (16 of 1908).

(d) *A*, a trustee directed to sell the trust property by auction, sells the same, but does not advertise the sale and otherwise fails in reasonable diligence in inviting competition. *A* is bound to make good the loss caused thereby to the beneficiary.

(e) *A*, a trustee for *B*, in execution of his trust, sells the trust property, but from want of due diligence on his part, fails to receive part of the purchase-money. *A* is bound to make good the loss thereby caused to *B*.

(f) *A*, a trustee for *B* of a policy of insurance, has funds in hand for payment of the premiums. A neglects to pay the premiums and the policy is consequently forfeited. *A* is bound to make good the loss to *B*.

(g) *A* bequeaths certain money to *B* and *C* as trustees, and authorizes them to continue trust moneys upon the personal security of certain firm in which *A* had himself invested them. *A* dies, and a change takes place in the firm. *B* and *C* must not permit the moneys to remain upon the personal security of the new firm.

(h) *A*, a trustee for *B*, allows the trust to be executed solely by his co-trustee *C*. *C* misapplies the trust property. *A* is personally answerable for the loss resulting to *B*.

16. Conversion of perishable property.—Where the trust is created for the benefit of several persons in succession, and the trust property is of a wasting nature or a future or reversionary interest, the trustee is bound, unless an intention to the contrary may be inferred from the instrument of trust, to convert the property into property of a permanent and immediately profitable character.

Illustrations

(a) *A* bequeaths to *B* all his property in trust for *C* during his life and on his death for *D*, and *D's* death for *E*. *A's* property consists of three lease-hold houses, and there is nothing in *A's* will to show that he intended the houses to be enjoyed in specie. *B* should sell the houses and invest the proceeds in accordance with section 20.

(b) *A* bequeaths to *B* his three lease hold houses in Calcutta and all the furniture therein in trust for *C* during his life, and on his death for *D*, and on *D's* death for *E*. Here an intention that the houses and furniture should be enjoyed in specie appears clearly, and *B* should not sell them.

COMMENTS

The rule contained in this section has been explained by Wigam V-C in these words:

> "Where personal estate is given in terms amounting to a general bequest to be enjoyed by persons in succession, the interpretation the court puts upon the bequest in that the persons indicated are to enjoy the same thing in succession, and in order to effectuate that intention, the court as a general rule converts into permanent investments so much of the personality as is of a wasting or perishable nature at the death of the testator, and also reversionary interests. The rule did not originally ascribe to testators the intention to effect such conversions, except in so far as a testator may be supposed to intend that which the law will do; but the court, finding the intention of the testator to be that the objects of his bounty shall take successive interests in one and the same thing, converts the property, as the only means of giving effect to that intention"; *Hiuves* v. *Hiuves*, (1844) 3 Hare 609.

17. Trustee to be impartial.—Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another.

Where the trustee has a discretionary power, nothing in this section shall be deemed to authorise the Court to control the exercise reasonably and in good faith of such discretion.

Illustration

A, a trustee for *B*, *C* and *D* is empowered to choose between several specified modes of investing the trust property. *A* in good faith chooses one of these modes. The Court will not interfere, although the result of the choice may be to vary the relative rights of *B*, *C* and *D*.

18. Trustee to prevent waste.—Where the trust is created for the benefit of several persons in succession, and one of them is in possession of the trust property, if he commits

or threatens to commit, any act which is destructive or permanently injurious thereto, the trustee is bound to take measures to prevent such act.

19. Accounts and information.—A trustee is bound (a) to keep clear and accurate accounts of the trust property, and (b) at all reasonable times, at the request of the beneficiary to furnish him with full and accurate information as to the amount and state of the trust property.

COMMENTS

(i) It is an indisputable fact that a trustee is bound liable to keep and maintain clear and accurate accounts so as to furnish the beneficiary or beneficiaries with full and accurate information in relation thereto, irrespective of any negligence or wilful default; *T.G. Viswanathan Chettiar* v. *T.A. Shanmugha Chettiar*, AIR 1992 Mad 148: 1990 (2) Mad LW 102.

(ii) A trustee is bound to keep clear and accurate accounts of the trust property and should furnish the beneficiary with full and accurate information so as to amount the state of the trust property at all reasonable times; *T.G. Vishwanathan Chettiar* v. *T.A. Shanmugha Chettiar*, AIR 1992 Mad 148.

(iii) The Court has indisputable power to order back-accounts even if there is no evidence of dishonesty, wilful default or malversation on the part of the trustee; *Pappa* v. *Shanmughthamal*, AIR 1991 Mad 90.

20. Investment of trust-money.—Where the trust property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities and on no others:—

(a) in promissory notes, debentures, stock or other securities [1][of any [2][State Government] or] of the [3][Central Government], or of the United Kingdom of Great Britain and Ireland:

[4][Provided that securities, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any such Government, shall be deemed, for the purposes of this clause, to be securities of such Government;]

(b) in bonds, debentures and annuities [5][charged or secured by the [6][Parliament of the United Kingdom] [7][before the 15th day of August, 1947] on the revenues of India or of the [8][Governor-General in Council[9]] or of any Province[9]]:

[10][Provided that after the fifteenth day of February, 1916, no money shall be invested in any such annuity being a terminable annuity unless a sinking fund has been established in connection with such annuity; but nothing in this proviso shall apply to investments made before the date aforesaid;]

[11][(bb) in India three and a half per cent. stock, India three per cent. stock, India two and a half per cent. stock or any other capital stock [12][which before the 15th day

1. Ins. by Act 31 of 1920, sec. 2 and Sch. 1.
2. Subs. by the A.O. 1950, for "Provincial Government"
3. Subs. by the A.O. 1937, for "Government of India".
4. Added by Act 18 of 1934, sec. 2.
5. Subs. by the A.O. 1937 for "charged by the Imperial Parliament on the revenues of India".
6. Subs. by the A.O. 1950 for "Imperial Parliament".
7. Ins. by the A.O. 1948.
8. Subs. by the A.O. 1948, for "Federation".
9. The words "Governor General in Council" and "Province" stand unmodified *vide* the A.O. 1950.
10. Ins. by Act 1 of 1916, sec. 2.
11. Ins. by Act 1 of 1916, sec. 2.
12. Subs. by the A.O. 1950 for "which may at any time hereafter be".

of August, 1947, was] issued by the Secretary of State for India in Council under the authority of an Act of Parliament [1][of the United Kingdom] and charged on the revenues of India; [2][or which [3][was] issued by the Secretary of State on behalf of the Governor-General in Council under the provisions of Part XIII of the Government of India Act, 1935];]

(c) in stock or debentures of, or shares in, railway or other companies the interest whereon shall have been guaranteed by the Secretary of State for India in Council; [4][or by the Central Government] [4][or in debentures of the Bombay [5][Provincial] Co-operative Bank Limited, the interest whereon shall have been guaranteed, by the Secretary of State for India in Council] [2][or the State Government of Bombay];

[6][(d) in debentures or other securities for money issued, under the authority of [7][any Central Act or Provincial Act or State Act], by or on behalf of any municipal body, port trust, or city improvement trust in any Presidency-town or in Rangoon Town, or by or on behalf of the trustees of the port of Karachi:]

[8][Provided that after the 31st day of March, 1948, no money shall be invested in any securities issued by or on behalf of a municipal body, port trust or city improvement trust in Rangoon Town, or by or on behalf of the trustees of the port of Karachi;]

(e) on a first mortgage of immovable property situate in [9][any part of the territories to which this Act extends]: Provided that the property is not a lease hold for a term of years, and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the mortgage-money; [10][***]

[11][(ee) in units issued by the Unit Trust of India under any unit scheme made under section 21 of the Unit Trust of India Act, 1963 (52 of 1963); or]

(f) on any other security expressly authorized by the instrument of trust, [12][or by the Central Government by the notification in the Official Gazette] or by any rule which the High Court may from time to time prescribe in this behalf:

Provided that, where there is a person competent to contract and entitled in possession to receive the income of the trust property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (d), (e) and (f) shall be made without his consent in writing.

[3][**20A. Power to purchase redeemable stock at a premium.**—(1) A trustee may invest in any of the securities mentioned or referred to in section 20, notwithstanding that the same may be redeemable and that the price exceeds the redemption value:

1. Ins. by the A.O. 1950.
2. Ins. by the A.O. 1937.
3. Subs. by the A.O. 1950 for "may be".
4. Ins. by Act 21 of 1917, sec. 2.
5. Subs. by Act 37 of 1925, sec. 2 and Sch. 1, for "Central".
6. Subs. by Act 3 of 1908, sec. 2, for clause (d).
7. The words "any act of a Legislature established in British India "have been successively amended by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, sec. 3 and Sch., to read as above.
8. Ins. by the A.O. 1948.
9. The words "British India" have been successively amended by the A.O. 1948, the A.O. 1950, and Act 3 of 1951, sec. 3 and Sch., to read as above.
10. The word "or" omitted by Act 16 of 1975, sec. 2 (w.e.f. 7-1-1975).
11. Ins. by Act 16 of 1975, sec. 2 (w.e.f. 7-1-1975).
12. Ins. by Act 1 of 1916, sec. 3 (w.e.f. 7-1-1975).

Provided that a trustee may not purchase at a price exceeding its redemption value and security mentioned or referred to in clauses (c) and (d) of section 20, which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or purchase any such security as is mentioned or referred to in the said clauses which is liable to be redeemed at par or at some other fixed rate at a price exceeding fifteen per cent. above par or such other fixed rate.

(2) A trustee may retain until redemption any redeemable stock, fund or security which may have been purchased in accordance with this section.]

21. Mortgage of land pledged to Government under Act 26 of 1871—Deposit in Government Savings Bank.—Nothing in section 20 shall apply to investments made before this Act comes into force, or shall be deemed to preclude an investment on a mortgage of immovable property already pledged as security for an advance under the Land Improvement Act, 1871[1], or, in case the trust-money does not exceed three thousand rupees, a deposit thereof in a Government Savings Bank.

22. Sale by trustee directed to sell within specified time.—Where a trustee directed to sell within a specified time extends such time the burden of proving, as between himself and the beneficiary, that the latter is not prejudiced by the extension lies upon the trustee, unless the extension has been authorised by a principal Civil Court of original jurisdiction.

Illustration

A bequeaths property to *B*, directing him with all convenient speed and within five years to sell it, and apply the proceeds for the benefit of *C*. In the exercise of reasonable discretion, *B* postpones the sale for six years. The sale is not thereby rendered invalid, but *C*, alleging that he has been injured by the postponement, institutes a suit against *B* to obtain compensation. In such suit the burden of proving that *C* has not been injured lies on *B*.

23. Liability for breach of trust.—Where the trustee commits a breach of trust, he is liable to make good the loss which the trust property or the beneficiary has thereby sustained, unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein with full knowledge of the facts of the case and of his rights as against the trustee.

A trustee committing a breach of trust is not liable to pay interest except in the following cases:—

(a) where he has actually received interest;

(b) where the breach consists in unreasonable delay in paying trust-money to the beneficiary;

(c) where the trustee ought to have received interest, but has not done so;

(d) where he may be fairly presumed to have received interest.

He is liable, in case (a), to account for the interest actually received, and, in case (b), (c) and (d), to account for simple interest at the rate of six per cent. per annum, unless the Court otherwise directs;

(e) where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon, he is liable to account for compound interest (with half-yearly rests) at the same rate;

(f) where the breach consists in the employment of trust property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary,

1. *See* now the Land Improvement Loans Act, 1883 (19 of 1883).

either for compound interest (with half-yearly rests) at the same rate, or for the net profits made by such employment.

Illustrations

(a) *A* trustee improperly leaves trust property outstanding, and it is consequently lost, he is liable to make good the property lost, but he is not liable to pay interest thereon.

(b) *A* bequeaths a house to *B* in trust to sell it and pay the proceeds to C. *B* neglects to sell the house for a great length of time, whereby the house is deteriorated and its market-price falls. *B* is answerable to C for the loss.

(c) *A* trustee is guity of unreasonable delay in investing trust money in accordance with section 20, or in paying it to the beneficiary. The trustee is liable to pay interest thereon for the period of the delay.

(d) The duty of the trustee is to invest trust-money in any of the securities mentioned in section 20, clauses (a), (b), (c) and (d). Instead of so doing, he retains the money in his hands. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, and the intermediate dividends and interest thereon.

(e) The instrument of trust directs the trustee to invest trust-money either in any of such securities or on mortgage of immovable property. The trustee does neither. He is liable for the principal money and interest.

(f) The instrument of trust directs the trustee to invest trust-money in any of such securities and to accumulate the dividends thereon. The trustee disregards the direction. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and compound interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, together with the amount of the accumulation which would have arisen from a proper investment of the intermediate dividends.

(g) Trust property is invested in one of the securities mentioned in section 20, clause (a), (b), (c) or (d). The trustee sells such security for some purpose not authorised by the terms of the instrument of trust. He is liable, at the option of the beneficiary, either to replace the security with the intermediate dividends and interest thereon, or to account for the proceeds of the sale with interest thereon.

(h) The trust property consists of land. The trustee sells the land to a purchaser for a consideration without notice of the trust. The trustee is liable, at the option of the beneficiary, to purchase other land of equal value to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.

COMMENTS

It is no answer to a charge of breach of trust that the trustee acted under competent legal advice; *S. Chettiar* v. *R. Dorai*, (1909) ILR 32 Mad 490.

24. No set-off allowed to trustee.—A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust property cannot set-off against his liability a gain which has accrued to another portion of the trust property through another and distinct breach of trust.

25. Non-liability for predecessor's default.—When a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor.

26. Non-liability for co-trustee's default.—Subject to the provisions of sections 13 and 15, a trustee is not, as such, liable for a breach of trust committed by his co-trustee:

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

(a) where he has delivered trust property to his co-trustee without seeing to its proper application;

(b) where he allows his co-trustee to receive trust property and fails to make due enquiry as to the co-trustee's dealings therewith or allows him to retain it longer than the circumstances of the case reasonably require;

(c) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it or does not within a reasonable time take proper steps to protect the beneficiary's interest.

Joining in receipt for conformity.—A co-trustee who joins in signing a receipt for trust property and proves that he has not received the same is not answerable, by reason of such signature only, for loss or mis-application of the property by his co-trustee.

Illustration

A bequeaths certain property to *B* and *C*, and directs them to sell it and invest the proceeds for the benefit of *D*. *B* and *C* accordingly sell the property, and the purchase money is received by *B* and retained in his hands, *C* pays no attention to the matter for two years, and then calls on *B* to make the investment. *B* is unable to do so, becomes insolvent, and the purchase-money is lost. *C* may be compelled to make good the amount.

27. Several liability of co-trustee.—Where co-trustees jointly commit a breach of trust, or where one of them by his neglect enables the other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach.

Contribution as between co-trustees.—But, as between the trustees themselves, if one be less guilty than another and has had to refund the loss, the former may compel the latter, or his legal representative, to the extent of the assets he has received, to make good such loss; and, if all be equally guilty; any one or more of the trustees who has had to refund the loss may compel the others to contribute.

Nothing in this section shall be deemed to authorise a trustee who has been guilty of fraud to institute a suit to compel contribution.

28. Non-liability of trustee paying without notice of transfer by beneficiary.—When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered.

29. Liability of trustee where beneficiary's interest is forfeited to government.—When the beneficiary's interest is forfeited or awarded by legal adjudication [1][to the Government], the trustee is bound to hold the trust property to the extent of such interest for the benefit of such person in such manner as [2][the State Government] may direct in this behalf.

30. Indemnity of trustees.—Subject to the provisions of the instrument of trust and of sections 23 and 26, trustees shall be respectively chargeable only for such moneys, stocks, funds and securities as they respectively actually receive and shall not be answerable the one for the other of them, nor for any banker, broker or other person in whose hands any trust property may be placed, nor for the insufficiency or deficiency of any stocks, funds or securities nor otherwise for involuntary losses.

COMMENTS

A case of breach of trust is both a civil wrong and a criminal offence. But there are certain situations where it would be predominantly a civil wrong and may or may not amount to a criminal offence; *Madhavrao Jiwaji Rao Scindia* v. *Sambhajirao Chadrojirao Angre*, AIR 1988 SC 709: (1988) 1 SCC 692: 1988 Cr LJ 853.

CHAPTER IV

OF THE RIGHTS AND POWERS OF TRUSTEES

31. Right to title-deed.—A trustee is entitled to have in his possession the instrument of trust and all the documents of title (if any) relating solely to the trust property.

1. The words "to Government" successively amended by the A.O. 1937 and the A.O. 1950 to read as above.
2. Subs. by the A.O. 1937 for "the Government".

32. Right to re-imbursement of expenses.—Every trustee may re-imburse himself, or pay or discharge out of the trust property, all expenses properly incurred in or about the execution of the trust, or the realisation, preservation or benefit of the trust property, or the protection or support of the beneficiary.

If he pays such expenses out of his own pocket, he has a first charge upon the trust property for such expenses and interest thereon; but such charge (unless the expenses have been incurred with the sanction of a principal Civil Court of original jurisdiction) shall be enforced only by prohibiting any disposition of the trust property without previous payment of such expenses and interest.

If the trust property fails, the trustee is entitled to recover from the beneficiary personally on whose behalf he acted, and at whose request, expressed or implied, he made the payment, the amount of such expenses.

Right to be recouped for erroneous over-payment.—Where a trustee has by mistake made an over-payment to the beneficiary, he may reimburse the trust property out of the beneficiary's interest. If such interest fail, the trustee is entitled to recover from the beneficiary personally the amount of such over-payment.

COMMENTS

(i) A trustee is not entitled to claim indemnity till he suffers an injury for which he has to be indemnified; *R. Mathalone* v. *Bombay Life Assurance Co. Ltd.*, AIR 1953 SC 385: 1953 SCJ 548: 1954 SCR 117.

(ii) A defaulting trustee who is already indebted to the estate for his previous withdrawals and defalcations will have no right of indemnity for a subsequent liability even if it were incurred for the benefit of the estate; *P.B. Ghosh* v. *M.A. Davar*, AIR 1946 Cal 83 (DB).

33. Right to indemnity from gainer by breach of trust.—A person other than a trustee who has gained an advantage from a breach of trust must indemnify the trustee to the extent of the amount actually received by such person under the breach; and where he is a beneficiary the trustee has a charge on his interest for such amount.

Nothing in this section shall be deemed to entitle a trustee to be indemnified who has, in committing the breach of trust, been guilty of fraud.

34. Right to apply to Court for opinion in management of trust property.—Any trustee may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the trust property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal.

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

The trustee stating in good faith the facts in such petition and acting upon the opinion, advice or direction given by the Court shall be deemed so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made.

COMMENTS

(i) The petitioners pleaded that dissolution of the trust concerned and distribution of the corpus in the manner suggested by them will be in the best interests of all the beneficiaries including the ultimate beneficiary, for the arrangement proposed will help reduce the tax burden of the beneficiaries apart from giving an oportunity to invest in other securities which would be more encrative and be yielding more of income. Held, the Court shall grant approval on satisfaction that all beneficiaries agree to it and no injury is caused to any of the parties; *Prince Muffakham Jah Bahadur* v. *H.E.H. Nawab Mir Barkat Ali Khan Bahadur Prince Mukarram Jah*, AIR 1989 AP 68: (1987) 2 APLJ (HC) 462.

(ii) Advice etc., given under this section is not an order and the disobedience thereof does not involve committal for contempt; *Re Mohd. Hashim Gazdar*, AIR 1945 Sind 81: ILR (1945) Kar 384 (FB) followed in *Krishen Kumar Khosa* v. *Krishen Lal*, AIR 1979 J&K 13: 1979 Kash LJ 29.

(iii) The jurisdiction conferred on the court under section 34 is a limited jurisdiction under this provision, the court has not been conferred with overall jurisdiction in matters arising under a trust deed. The Statute has prescribed what the court can do and inferentially what it cannot do. From the fact that the court has been conferred powers to grant only certain reliefs, if follows as a matter of law that the court has been prohibited from granting any other relief; *Official Trustee, W.B.* v. *Sachindra Nath Chatterjee*, AIR 1969 SC 823: (1969) 3 SCR 92.

35. Right to settlement of accounts.—When the duties of a trustee, as such, are completed, he is entitled to have the accounts of his administration of the trust property examined and settled; and, where nothing is due to the beneficiary under the trust, to an acknowledgement in writing to that effect.

36. General authority of trustee.—In addition to the powers expressly conferred by this Act and by the instrument of trust, and subject to the restrictions, if any, contained in such instrument, and to the provisions of section 17, a trustee may do all acts which are reasonable and proper for the realisation, protection or benefit of the trust property, and for the protection or support of a beneficiary who is not competent to contract.

[1][***]

Except with the permission of a principal Civil Court of original jurisdiction, no trustee shall lease trust property for a term exceeding twenty-one years from the date of executing the lease, nor without reserving the best yearly rent that can be reasonably obtained.

37. Power to sell in lots and either by public auction or private contract.—Where the trustee is empowered to sell any trust property, he may sell the same subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs.

38. Power to sell under special conditions power to buy-in and re-sell.—The trustee making any such sale may insert such reasonable stipulations either as to title or evidence of title, or otherwise, in any conditions of sale or contract for sale, as he thinks fit; and may also buy-in the property or any part thereof at any sale by auction, and rescind or vary any contract for sale, and re-sell the property so bought in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby.

Time allowed for selling trust property.—Where a trustee is directed to sell trust property or to invest trust money in the purchase of property, he may exercise a reasonable discretion as to the time to effecting the sale or purchase.

Illustrations

(a) *A* bequeaths property to *B*, directing him to sell it with all convenient speed and pay the proceeds to C. This does not render an immediate sale imperative.

(b) *A* bequeaths property to *B*, directing him to sell it at such time in such manner as he shall think fit and invest the proceeds for the benefit of C. This does not authorise *B*, as between him and C, to postpone the sale to an indefinite period.

39. Power to convey.—For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

40. Power to vary investments.—A trustee may, at his discretion, call in any trust property invested in any security, and invest the same on any of the securities mentioned

1. Second paragraph repealed by Act 12 of 1891, sec. 2 and Sch. 1, Pt 1.

or referred to in section 20, and from time to time vary any such investments for others of the same nature:

Provided that where there is a person competent to contract and entitled at the time to receive the income of the trust property for his life, or for any greater estate, no such change of investment shall be made without his consent in writing.

41. Power to apply property of minors, etc., for their maintenance, etc.—Where any property is held by a trustee in trust for a minor, such trustee may, at his discretion, pay to the guardians (if any) of such minor, or otherwise apply for or towards his maintenance or education or advancement in life or the reasonable expenses of his religious worship, marriage or funeral, the whole or any part of the income to which he may be entitled in respect of such property; and such trustee shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section 20, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen:

Provided that such trustee may, at any time, if he thinks fit apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

Where the income of the trust property is insufficient for the minor's maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the trustee may, with the permission of a principal Civil Court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement or expenses.

Nothing in this section shall be deemed to affect the provisions of any local law for the time being in force relating to the persons and property of minors.

42. Power to give receipts.—Any trustees or trustee may give a receipt in writing for any money, securities or other movable property payable, transferable or deliverable to them or him by reason, or in the exercise of any trust or power; and, in the absence of fraud, such receipt shall discharge the person paying, transferring or delivering the same therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof.

43. Power to compound, etc.—Two or more trustees acting together may, if and as they think fit,—

(a) accept any composition or any security for any debt or for any property claimed;

(b) allow any time for payment of any debt;

(c) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the trust; and

(d) for any of those purposes, enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to them seem expedient without being responsible for any loss occasioned by any act or thing so done by them in good faith.

The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when by the instrument of trust, if any, a sole trustee is authorised to execute the trusts and powers thereof.

This section applies only if and as far as a contrary intention is not expressed in the instrument of trust, if any, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

This section applies only to trusts created after this Act comes into force.

44. Power to several trustees of whom one disclaims or dies.—When an authority to deal with the trust property is given to several trustees and one of them disclaims or dies, the authority may be exercised by the continuing trustees, unless from the terms of the instrument of trust it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees.

COMMENTS

If a decree for possession and *mesne profits* has been passed in favour of trustees, an execution application by one co-trustee would be deemed to be for the benefit of the entire body of co-trustees in the absence of any indication to the contrary and is not vitiated on that account; *Sahdeo Prasad Verma* v. *Dr. Raja Ram*, AIR 1984 All 169: (1984) 10 All LR 385.

45. Suspension of trustee's powers by decree.—Where a decree has been made in a suit for the execution of a trust, the trustee must not exercise any of his powers except in conformity with such decree, or with the sanction of the Court by which the decree has been made, or, where an appeal against the decree is pending, of the appellate Court.

CHAPTER V

OF THE DISABILITIES OF TRUSTEES

46. Trustee cannot renounce after acceptance.—A trustee who has accepted the trust cannot afterwards renounce it except (a) with the permission of a principal Civil Court of original jurisdiction, or (b) if the beneficiary is competent to contract, with his consent, or (c) by virtue of a special power in the instrument of trust.

47. Trustee cannot delegate.—A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation.

Explanation.—The appointment of an attorney or proxy to do an act merely ministerial, and involving no independent discretion is not a delegation within the meaning of this section.

Illustrations

(a) *A* bequeaths certain property to *B* and *C* on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. *B* dies, *C* may bequeath the trust property to *D* and *E* upon the trusts of *A's* will.

(b) *A* is a trustee of certain property with power to sell the same. *A* may employ an auctioneer to effect the sale.

(c) A bequeaths to *B* fifty houses let at monthly rents in trust to collect the rents and pay them to *C*. *B* may employ a proper person to collect these rents.

COMMENTS

No trustee can delegate his powers and duties to another transtee and any agreement to do so would be illegal and void and would not be covered by any of the exceptions in section 47; *H.E.H. The Nizam's Jewellery Trust. M/s. Shanti Vijay and Co.* v. *Princess Fatima Fouzia*, AIR 1980 SC 17: (1979) 4 SCC 602: (1980) 1 SCR 459.

48. Co-trustees cannot act singly.—When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust, otherwise provides.

49. Control of discretionary power.—Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a principal Civil Court of original jurisdiction.

50. Trustee may not charge for services.—In the absence of express directions to the contrary contained in the instrument of trust or of a contract to the contrary entered into with the beneficiary or the Court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill and loss of time in executing the trust.

Nothing in this section applies to any Official Trustee, Administrator-General, Public Curator, or person holding a certificate of administration.

51. Trustee may not use trust property for his own profit.—A trustee may not use or deal with the trust property for his own profit or for any other purpose unconnected with the trust.

52. Trustee for sale or his agent may not buy.—No trustee whose duty it is to sell trust property, and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, put the same or any interest therein, on his own account or as agent for a third person.

COMMENTS

Where a trustee makes the sale of a property belonging to the trust, without any compelling reasons, in favour of his son, without obtaining the permission of the court concerned, it is the duty of the court in which the sale is challenged, to examine whether the trustee has acted reasonably and in good faith or whether he has committed a breach of trust by benefiting himself from the transaction in an indirect manner; *M.V. Ramasubbier* v. *Manicka Narasimachari*, AIR 1979 SC 671: (1979) 2 SCC 65: (1979) 2 SCR 1177.

53. Trustee may not buy beneficiary's interest without permission.—No trustee, and no person who has recently ceased to be a trustee, may, without the permission of a principal Civil Court of original jurisdiction, buy or become mortgagee or lessee of the trust property or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage or lease is manifestly for the advantage of the beneficiary.

Trustee for purchase.—And no trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary may buy it, or any part thereof, or obtain a mortgage or lease of it, or any part thereof, for himself.

54. Co-trustees may not lend to one of themselves.—A trustee or co-trustee whose duty it is to invest trust-money or mortgage or personal security must not invest it on a mortgage by, or on the personal security of, himself or one of his co-trustees.

CHAPTER VI

OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY

55. Right to rents and profits.—The beneficiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust property.

56. Right to specific execution.—The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interests.

Right to transfer of possession.—And, where there is only one beneficiary and he is competent to contract, or where there are several beneficiaries and they are competent to contract and all of one mind, he or they may require the trustee to transfer the trust property to him or them, or to such person as he or they may direct.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in the second clause of this section applies to such property during her marriage.

Illustrations

(a) Certain Government securities are given to trustees upon trust to accumulate the interest until *A* attains the age of 24, and then to transfer the gross amount to him. *A* on attaining majority may, as the person exclusively interested in the trust property, require the trustees to transfer it immediately to him.

(b) *A* bequeaths Rs. 10,000 to trustees upon trust to purchase an annuity for *B*, who has attained his majority and is otherwise competent to contract. *B* may claim Rs. 10,000.

(c) *A* transfers certain property to *B* and directs him to sell or invest it for the benefit of *C*, who is competent to contract. C may elect to take the property in its original character.

57. Right to inspect and take copies of instrument of trust accounts, etc.—The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust, to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust property, the accounts of the trust property, and the vouchers (if any) by which they are supported, and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty.

58. Right to transfer beneficial interest.—The beneficiary, if competent to contract may transfer his interest, but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest:

Provided that when property is transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section shall authorise her to transfer such interest during her marriage.

59. Right to sue for execution of trust.—Where no trustees are appointed or all the trustees die, disclaim or are discharged, or where for any other reason the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee.

60. Right to proper trustees.—The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust property shall be properly protected and held and administered by proper persons and by a proper number of such persons.

Explanation I.—The following are not proper persons within the meaning of this section:—

A person domiciled abroad; an alien enemy; a person having an interest inconsistent with that of the beneficiary; a person in insolvent circumstances; and, unless the personal law of the beneficiary allows otherwise, a married woman and a minor.

Explanation II.—When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

Illustrations

(a) *A*, one of several beneficiaries, proves that *B*, the trustee, has improperly disposed of part of the trust property, or that the property is in danger from B's being in insolvent circumstances; or that he is incapacitated from acting, as trustee. A may obtain a receiver of the trust property.

(b) *A* bequeaths certain jewels to *B* in trust for *C*. *B* dies during *A's* lifetime; then *A* dies, C is entitled to have the property conveyed to a trustee for him.

(c) *A* conveys certain property to four trustees in trust for *B*. Three of the trustees die. *B* may institute a suit to have three new trustees appointed in the place of the deceased trustees.

(d) *A* conveys certain property to three trustees in trust for *B*. All the trustees disclaim. B may institute a suit to have three trustees appointed in place of the trustees so disclaiming.

(e) *A*, a trustee for *B*, refuses to act, or goes to reside permanently out of [1][India] or is declared an insolvent, or compounds with his creditors, or suffers a co-trustee to commit a breach of trust, *B* may institute a suit to have *A* removed and a new trustee appointed in his room.

61. Right to compel to any act of duty.—The beneficiary has a right that his trustee shall be compelled to perform any particular act of his duty as such, and restrained from committing any contemplated or probable breach of trust.

Illustrations

(a) *A* contracts with *B* to pay him monthly Rs. 100 for the benefit of *C*, *B* writes and signs a letter declaring that he will hold in trust for *C* the money so to be paid. *A* fails to pay the money in accordance with his contract, *C* may compel *B* on a proper indemnity to allow *C* to sue on the contract in *B's* name.

(b) *A* is trustee of certain land, with a power to sell the same and pay the proceeds to *B* and *C* equally. *A* is about to make an improvident sale of the land. *B* may sue on behalf of himself and *C* for an injunction to restrain *A* from making the sale.

1. Subs. by the A.O. 1950 for "the Provinces".

62. Wrongful purchase by trustee.—Where a trustee has wrongfully bought trust property, the beneficiary has a right to have the property declared subject to the trust or re-transferred by the trustee, if it remains in his hands unsold, or, if it has been bought from him by any person with notice of the trust, by such person. But in such case the beneficiary must repay the purchase-money paid by the trustee, with interest, and such other expenses (if any) as he has properly incurred in the preservation of the property; and the trustee or purchaser must (a) account for the net profits of the property, (b) be charged with an occupation-rent, if he has been in actual possession of the property, and (c) allow the beneficiary to deduct a proportionate part of the purchase-money if the property has been deteriorated by the acts or omissions of the trustee or purchaser.

Nothing in this section—

(a) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or re-transferred, have contracted in good faith with the trustee or purchaser; or

(b) entitles the beneficiary to have the property declared subject to the trust or re-transferred where he, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, ratified the sale to the trustee with full knowledge of the facts of the case and of his rights as against the trustee.

63. Following trust property into the hands of third persons.—Where trust property comes into the hands of a third person inconsistently with the trust, the beneficiary may require him to admit formally, or may institute a suit for a declaration, that the property is comprised in the trust.

Into that into which it has been converted.—Where the trustee has disposed of trust property and the money or other property which he has received therefor can be traced in his hands, or the hands of his legal representative or legatee, the beneficiary has, in respect thereof, rights as nearly as may be the same as his rights in respect of the original trust property.

Illustrations

(a) *A*, a trustee for *B* of Rs. 10,000, wrongfully invests the Rs. 10,000 in the purchase of certain land, *B* is entitled to the land.

(b) *A*, a trustee, wrongfully purchases land in his own name, partly with his own money, partly with money subject to a trust for *B*. *B* is entitled to a charge on the land for the amount of the trust money so misemployed.

64. Saving of rights of certain transferees.—Nothing in section 63 entitles the beneficiary to any right in respect of property in the hands of—

(a) a transferee, in good faith for consideration without having notice of the trust, either when the purchase-money was paid, or when the conveyance was executed, or

(b) a transferee for consideration from such a transferee.

A judgment-creditor of the trustee attaching and purchasing trust property is not a transferee for consideration within the meaning of this section.

Nothing in section 63 applies to money, currency notes, and negotiable instruments in the hands of a *bona fide* holder to whom they have passed in circulation, or shall be deemed to affect the Indian Contract Act, 1872 (9 of 1872), section 108, or the liability of a person to whom a debt or charge is transferred.

65. Acquisition by trustee of trust property wrongfully converted.—Where a trustee wrongfully sells or otherwise transfers trust property and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration.

66. Right in case of blended property.—Where the trustee wrongfully mingles the trust property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.

67. Wrongful employment by partner-trustee of trust property for partnership purposes.—If a partner, being a trustee, wrongfully employs trust property in the business or on the account of the partnership, no other partner is liable therefor in his personal capacity to the beneficiaries, unless he had notice of the breach of trust.

The partners having such notice are jointly and severally liable for the breach of trust.

Illustrations

(a) *A* and *B* are partners. *A* dies, having bequeathed all his property to *B* in trust for *Z*, and appointed *B* his sole executor. *B* instead of winding-up the affairs of the partnership, retains all the assets in the business. *Z* may compel him, as partner, to account for so much of the profits as are derived from *A's* share of the capital. *B* is also answerable to *Z* for the improper employment of *A's* assets.

(b) *A*, a trader, bequeaths his property to *B* in trust for *C*, appoints *B* his sole executor, and dies. *B* enters into partnership with *X* and *Y* in the same trade, and employs *A's* assets in the partnership business. *B* gives an indemnity to *X* and *Y* against the claims of *C*. Here *X* and *Y* are jointly liable with *B* to *C*, as having knowingly become parties to the breach of trust committed by *B*.

68. Liability of beneficiary joining in breach of trust.—Where one of several beneficiaries—

(a) joins in committing breach of trust, or

(b) knowingly obtains any advantage therefrom, without the consent of the other beneficiaries, or

(c) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it, or does not within a reasonable time take proper steps to protect the interests of the other beneficiaries, or

(d) has deceived the trustee, and thereby induced him to commit a breach of trust,

the other beneficiaries are entitled to have all his beneficial interest impounded as against him and all who claim under him (otherwise than as transferees for consideration without notice of the breach) until the loss caused by the breach has been compensated.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section applies to such property during her marriage.

69. Rights and liabilities of beneficiary's transferee.—Every person to whom a beneficiary transfers his interest has the rights, and is subject to the liabilities, of the beneficiary in respect of such interest at the date of the transfer.

CHAPTER VII

OF VACATING THE OFFICE OF TRUSTEE

70. Office how vacated.—The office of a trustee is vacated by his death or by his discharge from his office.

71. Discharge of trustee.—A trustee may be discharged from his office only as follows:—

(a) by the extinction of the trust;

(b) by the completion of his duties under the trust;

(c) by such means as may be prescribed by the instrument of trust;

(d) by appointment under this Act of a new trustee in his place;

(e) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract; or

(f) by the Court to which a petition for his discharge is presented under this Act.

COMMENTS

No trustee can get a discharge, unless he renders account of his management and this liability is irrespective of any question of negligence or wilful default; *Sri V.L.N.S. Temple* v. *I.P. Reddy*, AIR 1967 SC 781: (1967) 1 SCR 280.

72. Petition to be discharged from trust.—Notwithstanding the provisions of section 11, every trustee may apply by petition to a principal Civil Court of original jurisdiction to be discharged from his office, and, if the Court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be paid out of the trust property. But where there is no such reason, the Court shall not discharge him, unless a proper person can be found to take his place.

73. Appointment of new trustees on death, etc.—Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is for a continuous period of six months, absent from [1][India] or leaves [1][India] for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by—

(a) the person nominated for that purpose by the instrument of trust (if any), or

(b) if there be no such person, or no such person able and willing to act, the author of the trust if he be alive and competent to contract, or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

Every such appointment shall be by writing under the hand of the person making it.

On an appointment of a new trustee, the number of trustees may be increased.

The Official Trustee may, with his consent and by the order of the Court, be appointed under this section, in any case in which only one trustee is to be appointed and such trustee is to be the sole trustee.

The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will, but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power.

74. Appointment by Court.—Wherever any such vacancy or disqualification occurs and it is found impracticable to appoint a new trustee under section 73, the beneficiary may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for the appointment of a trustee or a new trustee, and the Court may appoint a trustee or a new trustee accordingly.

Rule for selecting new trustees.—In appointing new trustees, the Court shall have regard (a) to the wishes of the author of the trust as expressed in, or to be inferred from, the instrument of trust; (b) to the wishes of the person, if any empowered to appoint new trustees; (c) to the question whether the appointment will promote or impede the execution of the trust; and (d) where there are more beneficiaries than one, to the interests of all such beneficiaries.

1. Subs. by the A.O. 1950 for "the Provinces".

75. Vesting of trust property in new trustees.—Whenever any new trustee is appointed under section 73 or section 74, all the trust property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representative of any trustee, shall become vested in such new trustee, either solely or jointly with the surviving or continuing trustees or trustee, as the case may require.

Powers of new trustee.—Every new trustee so appointed, and every trustee appointed by a Court either before or after the passing of this Act shall have the same powers, authorities and discretions, and shall in all respects act, as if he had been originally nominated a trustee by the author of the trust.

76. Survival of trust.—On the death or discharge of one of several co-trustees, the trust survives and the trust property passes to the others, unless the instrument of trust expressly declares otherwise.

CHAPTER VIII

OF THE EXTINCTION OF TRUSTS

77. Trust how extinguished.—A trust is extinguished—

(a) when its purpose is completely fulfilled; or

(b) when its purpose becomes unlawful; or

(c) when the fulfilment of its purpose becomes impossible by destruction of the trust property or otherwise; or

(d) when the trust, being revocable, is expressly revoked.

COMMENTS

The expression 'otherwise' in clause (c) of section 77 covers a case where the trust property is not available for the fulfilment of its purpose, where for example, all the beneficiaries under the trust have validly transferred their interests resulting in the extinction of the trust; *Princess Usha Trust* v. *Commissioner of Income-tax,* 1983 Tax LR 838.

78. Revocation of trust.—A trust created by will may be revoked at the pleasure of the testator.

A trust otherwise created can be revoked only—

(a) where all the beneficiaries are competent to contract—by their consent;

(b) where the trust has been declared by a non-testamentary instrument or by word of mouth—in exercise of a power of revocation expressly reserved to the author, of the trust; or

(c) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors—at the pleasure of the author of the trust.

Illustration

A conveys property to *B* in trust to sell the same and pay out of the proceeds the claims of *A's* creditors. *A* reserves no power of revocation. If no communication has been made to the creditors, *A* may revoke the trust. But if the creditors, are parties to the arrangement, the trust cannot be revoked without their consent.

COMMENTS

In the absence of a power of revocation being reserved in the deed of revocation, the new trustee declared in the deed of revocation cannot be revoked by virtue of the power of revocation, contained in the original deed of settlement; *Central Bank Executor & Trustee Co. Ltd.* v. *Hormusji Nusserwanji Madraswalla,* AIR 1969 Bom 101: 70 Bom LR 568: 1968 Mah LJ 750.

79. Revocation not to defeat what trustees have duly done.—No trust can be revoked by the author of the trust so as to defeat or prejudice what the trustees may have duly done in execution of the trust.

CHAPTER IX

OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS

80. Where obligation in nature of trust is created.—An obligation in the nature of a trust is created in the following cases.

81. Where it does not appears that transferor intended to dispose of beneficial interest.—[*Rep. by the Benami Transactions (Prohibition) Act, 1988 (45 of 1988), sec. 7 (w.e.f 19-5-1988)*].

82. Transfer to one for consideration paid by another.—[*Rep. by the Benami Transactions (Prohibition) Act, 1988 (45 of 1988), sec. 7 (w.e.f. 19-5-1988).*]

83. Trust incapable of execution or executed without exhausting trust property.—Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust property, the trustee, in the absence of a direction to the contrary, must hold the trust property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.

Illustrations

(a) *A* conveys land to *B*—

"upon trust", and no trust is declared; or

"upon trust to be thereafter declared", and no such declaration is ever made; or

upon trusts that are too vague to be executed; or

upon trusts that become incapable of taking effect; or

"in trust for *C*" and *C* renounces his interest under the trust.

In each of these cases *B* holds the land for the benefit of *A*.

(b) *A* transfers Rs. 10,000 in the four per cents. to *B*, in trust to pay the interest annually accruing due to C for her life. A dies. Then C dies. *B* holds the fund for the benefit of *A's* legal representative.

(c) *A* conveys land to *B* upon trust to sell it and apply one moiety of the proceeds for certain charitable purposes and the other for the maintenance of the worship of an idol. *B* sells the land, but the charitable purposes wholly fail, and the maintenance of the worship does not exhaust the second moiety of the proceeds. *B* holds the first moiety and the part unapplied of the second moiety for the benefit of *A* or his legal representative.

(d) *A* bequeaths Rs. 10,000 to *B*, to be laid out in buying land to be conveyed for purposes which either wholly or partially fail to take effect. *B* holds for the benefit of *A's* legal representative the undisposed of interest in the money or land if purchased.

84. Transfer for illegal purpose.—Where the owner of property transfers it to another for an illegal purpose and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor.

85. Bequest for illegal purpose.—Where a testator bequeaths certain property upon trust and the purpose of the trust appears on the face of the will to be unlawful, or during the testator's lifetime the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the property for the benefit of the testator's legal representative.

Bequest of which revocation is prevented by coercion.—Where property is bequeathed, and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative.

86. Transfer pursuant to rescindable contract.—Where property is transferred in pursuance of contract which is liable to rescission, or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor, subject to repayment by the latter of the consideration actually paid.

87. Debtor becoming creditor's representative.—Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein.

88. Advantage gained by fiduciary.—Where a trustee, executor, partner, agent, director of a company, legal adviser, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person, and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

Illustrations

(a) *A*, an executor, buys, at an under-value from *B*, a legatee, his claim under the will. *B* is ignorant of the value of the bequest. *A* must hold for the benefit of *B* the difference between the price and value.

(b) *A*, a trustee, uses the trust property for the purpose of his own business. *A* holds for the benefit of his beneficiary the profits arising from such user.

(c) *A*, a trustee, retires from his trust in consideration of his successor paying him a sum of money. *A* holds such money for the benefit of his beneficiary.

(d) *A*, a partner, buys land in his own name with funds belonging to the partnership. *A* holds such land for the benefit of the partnership.

(e) *A*, a partner, employed on behalf of himself and his co-partners is negotiating the terms of a lease, clandestinely stipulates with the lessor for payment to himself of a lakh of rupees. *A* holds the lakh for the benefit of the partnership.

(f) *A* and *B* are partners. *A* dies. *B* instead of winding-up the affairs of the partnership, retains all the assets in the business. *B* must account to *A's* legal representative for the profits arising from *A's* share of the capital.

(g) *A*, an agent employed to obtain a lease for *B*, obtains the lease for himself. *A* holds the lease for the benefit of *B*.

(h) *A*, a guardian, buys up for himself incumbrances on his ward *B's* estate at an under-value. *A* holds for the benefit of *B* the incumbrances so bought, and can only charge him with what he has actually paid.

COMMENTS

The agent employed to purchase the property on behalf of his principal fraudulently got his name entered in the sale certificate. The agent was holding the property in trust on behalf of and for the principal, and the agent was under duty and responsibility to make good the unauthorised profits be derived in such capacity to the principal; *P.V. Sankara Kurup* v. *Leelavathy Nambiar*, AIR 1994 SC 2694: 1994 AIR SCW 3796: (1994) 6 SCC 68.

89. Advantage gained by exercise of undue influence.—Where, by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced.

90. Advantage gained by qualified owner.—Where a tenant for life, co-owner, mortgagee, or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold, for the benefit of all persons interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted, in gaining such advantage.

Illustrations

(a) *A*, tenant for life of leasehold property, renews the lease in his own name and for his own benefit. A holds the renewed lease for the benefit of all those interested in the old lease.

(b) *A* village belongs to a Hindu family. *A*, one of its members, pays nazrana to Government, and thereby procures his name to be entered as the inamdar of the village. *A* holds the village for the benefit of himself and the other members.

(c) *A* mortgages land to *B*, who enters into possession. *B* allows the Government revenue to fall into arrear with a view to the land being put up for sale, and his becoming himself the purchaser of it. The land is accordingly sold to *B*. Subject to the repayment of the amount due on the mortgage and of his expenses properly incurred as mortgagee, *B* holds the land for the benefit of *A*.

COMMENTS

In law, the advantages obtained by the respondent, the qualified owner, must be held to be for the benefit of the persons interested—the mortgagor-appellant; *Namdev Shripati Nale* v. *Bapu Ganapati Jagtan*, (1997) 5 SCC 185.

91. Property acquired with notice of existing contract.—Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold that property for the benefit of the latter to the extent necessary to give effect to the contract.

92. Purchase by person contracting to buy property to be held on trust.—Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.

93. Advantage secretly gained by one of several compounding creditors.—Where creditors compound the debts due to them, and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co-creditors, he must hold, for the benefit of such creditors, the advantage so gained.

94. Constructive trusts in cases not expressly provided for.—[*Rep. by the Benami Transactions (Prohibition) Act, 1988 (45 of 1988), sec. 7 (w.e.f. 19-5-1988).*]

95. Obligor's duties, liabilities and disabilities.—The person holding property in accordance with any of the preceding sections of this Chapter must, so far as may be, perform the same duties, and is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it:

Provided that (a) where he rightfully cultivates the property or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill and loss of time in such cultivation or employment; and (b) where he holds the property by virtue of a contract with the person for whose benefit he holds it, or with any one through whom such person claims, he may, without the permission of the Court, buy or become lessee or mortgagee of the property or any part thereof.

96. Saving of rights of *bona fide* purchasers.—Nothing contained in this Chapter shall impair the rights of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force.

THE SCHEDULE

(*See* section 2)

STATUTE

Year and Chapter	Short title	Extent of repeal
29 Car. II, c. 3	The Statute of Frauds[1]	Sections 7, 8, 9, 10 and 11

ACTS OF THE GOVERNOR-GENERAL IN COUNCIL

Number and year	Short title	Extent of repeal
XXVIII of 1866	[2]The Trustee's and Mortgagee's Powers Act, 1866	Sections 2, 3, 4, 5, 32, 33, 34, 35, 36 and 37. In section [3][***] 43 the word "trustee" wherever it occurs; and in section 43 the words "management or" and "the trust-property or".
1 of 1877.	[2]The Specific Relief Act, 1877	In section 12 the first *illustration*.



1. Rep. in its application to India.
2. Repealed.
3. The figures "39", and by implication the word "and", rep. by Act 12 of 1891, sec. 2 and Sch. 1, Pt. 1.

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THE CHARITABLE AND RELIGIOUS TRUSTS ACT, 1920

INTRODUCTION

As a result of the decision taken by the Government to divest its officers of all direct superintendance and control of religious and charitable endowments in India; the Religious Endowments Act, 1863 (20 of 1863) was enacted. Since 1866 there had been constant complaints, as to the inefficacy of the Act to prevent the squandering or misappropriation of the Funds of such endowments. Suggestions for its amendments had from time to time been made to the Government of India. The Government of India decided to reconsider its policy in force since 1863. In March, 1914, the whole subject was discussed at a mixed conference of official and non-official gentlemen representing the Hindu, Muhammadan, Sikh and Buddhist communities. As a result of the deliberations of that conference the Cheritable and Religious Trusts Bill was introduced in the Legislature.

STATEMENT OF OBJECTS AND REASONS

The Religious Endowments Act, 1863 (XX of 1863), was the result of the decision of the Government to divest its officers of all direct superintendence and control of religious and charitable endowments in India, transferring their functions to manager or managing committees and merely making provision for intervention by the Civil Courts on application made by any person interested in a particular institution. This policy, however, did not long remain unchallenged, and since 1866 there have been constant complaints, especially in the Madras Presidency, as to the inefficacy of the Act to prevent the squandering or misappropriation of the funds of such endowments, and suggestions for its amendments have from time to time been made to the Government of India. Mr. Ananda Charlu in 1897, Mr. Srinivasa Rao in 1903 and Dr. (now Sir) Rash Behari Ghosh in 1908, for example, promoted amending Bills, but none of them became law. More recently in 1911, a private Bill was introduced in Bombay Legislative Council by the Hon'ble Sir Ibrahim Rahimtoola, to provide for the registration of all charitable trusts, exceeding a certain value and for the annual audit of the accounts of such trusts by auditors approved by Government. Endowments of a purely religious nature were not included but the contents of the Bill made it clear that the ultimate object was to press for legislation for religious as well as secular trusts. About the same time a private Bill was promoted by two non-official members of the Madras Legislative Council to provide for the regular publication of the accounts of all religious endowments above a certain value and for their audit by an officer to be appointed by the District Judge. These proposals led the Government of India to reconsider the policy in force since 1863. In March 1914, the whole subject was discussed at a mixed conference of official and non-official gentlemen representing the Hindu, Muhammadan, Sikh and Buddhist communities. The present BIll, which is the outcome of the deliberations of that conference, has as its objects the simplification and cheapening of the legal processes by which persons interested can

obtain information regarding the working of both religious and charitable trusts, and the exercise of a more efficient control over the action of trustees. The Bill provides that any person interested in a trust may apply by petition to the District Judge for an order directing the trustee to furnish him with information as to the nature and objects of the trust and of the value, condition, management and application of the subject matter of the trust, and of the income belonging thereto, or as to any of these matters, and also directing that the accounts of the trust shall be examined and audited. Failure to comply with such an order of the court would be deemed a breach of trust. In order, however, that such applications should not lead to protracted and contentious litigation, the court is debarred from trying any question of title between the petitioner and any person claiming title to the trust, or any question as to the existence or extent of any trust. Under the Bill, it will be left to those interested to move in the matter; the initiative will not rest with Government, nor will anything be done where no one is sufficiently interested to take action. When the court is moved the proceedings will be simple and expeditious; they will be held in the presence of all parties, and the order passed will be a judicial order of the court. Further, in order to meet the objection that recourse to section 14 of the Act of 1863 or section 92 of the Code of Civil Procedure, 1908, involves expensive litigation the court is authorised, on the application of the plaintiff and after the defendant is heard, to direct the defendant either to furnish security for the expenditure incurred or likely to be incurred in bringing and maintaining the suit or to deposit in court an amount sufficient to meet such expenditure.

It will be observed that the draft Bill only embodies general principles. It is intended that such details as the institution of some public record of the facts regarding these trusts, the publication of audited accounts, and the relaxation of some of the conditions governing committees constituted under the Act of 1863, e.g. the tenure of the membership of such committee should be left to Provincial Legislatures.

ACT 14 OF 1920

The Charitable and Religious Trusts Bill having been passed by the Legislature received its assent on 20th March, 1920. It came on the Statute Book as THE CHARITABLE AND RELIGIOUS TRUSTS ACT, 1920 (14 of 1920).

LIST OF AMENDING ACTS AND ADAPTATION ORDERS

1. The Charitable and Religious Trusts (Amendment) Act, 1923 (41 of 1923).
2. The Government of India (Adaptation of Indian Laws) Order, 1937.
3. The Adaptation of Laws Order, 1950.
4. The Part B States (Laws) Act, 1951 (3 of 1951).

THE CHARITABLE AND RELIGIOUS TRUSTS ACT, 1920

(14 of 1920)

[*20th March, 1920*]

An Act to provide more effectual control over the administration of Charitable and Religious Trusts.

WHEREAS it is expedient to provide facilities for the obtaining of information regarding trusts created for public purposes of a charitable or religious nature, and to enable the trustees of such trusts to obtain the directions of a court on certain matters, and to make special provision for the payment of the expenditure incurred in certain suits against the trustees of such trusts; It is hereby enacted as follows :—

1. Short title and extent.—(1) This act may be called the Charitable and Religious Trusts Act, 1920.

(2) It extends[1] to the whole of India [2][except the State of Jammu and Kashmir]:

Provided that the [3][Government of any State] may, by notification in the Official Gazette, direct that this Act, or any specified part thereof, shall not extend to [4][that State or any specified area therein] or to any specified trust or class of trusts.

2. Interpretation.—In this Act, unless there is anything repugnant in the subject or context, "the court" means the court of the district Judge [5][or any other court empowered in that behalf by the [6][State Government]] and includes the High Court in the exercise of its ordinary original civil jurisdiction.

3. Power to apply to the court in respect of trusts of a charitable or religious nature.—Save as hereinafter provided in this Act, any person having an interest in any express or constructive trust created or existing for a public purpose of a charitable or religious nature may apply by petition to the court within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situated to obtain an order embodying all or any of the following directions, namely:—

(1) directing the trustee to furnish the petitioner through the court with particulars as to the nature and objects of the trust, and of the value, condition, management and application of the subject-matter of the trust, and of the income belonging thereto, or as to any of these matters, and

(2) directing that the accounts of the trust shall be examined and audited:

Provided that no person shall apply for any such direction in respect of accounts relating to a period more than three years prior to the date of the petition.

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1. This Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and rep. in Orissa by the Orissa Hindu Religious Endowments Act, 1939 (Orissa 4 of 1939). The provisions of this Act, insofar as they are inconsistent with the provisions of the Bengal Wakf Act, 1934 (Ben. 13 of 1934), do not apply to any Wakf property in Bengal: *see* section 81 of that Act.

   This Act has been declared to be in force in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), sec.3 and Sch.; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), S. 3 and Sch.

   This Act shall not apply to any wakf to which the Wakf Act, 1954 (29 of 1954) applies.
2. Subs. by Act 3 of 1951, sec. 3 and Sch., for "except Part B States".
3. Subs. by the A.O. 1937 for "G.G. in C.".
4. Subs. by the A.O. 1937., for "any specified province or area".
5. Ins. by Act 41 of 1923, sec. 2.
6. Subs. by the A.O. 1950.

COMMENTS

Any person who has an interest in any express or constructive trust created or existing for a public purpose of a charitable or religious nature may apply by petition to the court for directing the trustee to furnish particulars as to the nature and objects of the trust, and of the value, condition , management and application of the subject-matter of the trust and the income belonging thereto and directing that the accounts of the trust must be examined and audited. Details about the accounts can be asked for only three years prior to the date of application.

4. Contents and verification of petition.—(1) The petition shall show in what way the petitioner claims to be interested in the trust, and shall specify, as far as may be, the particulars and the audit which he seeks to obtain.

(2) The petition shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908), for signing and verifying plaints.

COMMENTS

The petitioner has to state in what way he claims to be interested in the trust and has to specify the particulars and the audit which he seeks to obtain. The petition should be in writing, signed and verified in the manner prescribed by the Code of Civil Procedure, 1908, for signing and verifying plaints.

5. Procedure on petition.—(1) If the court on receipt of a petition under section 3, after taking such evidence and making such inquiry, if any, as it may consider necessary, is of opinion of that the trust to which the petition relates is a trust to which this Act applies, and that the petitioner has an interest therein, it shall fix a date for the hearing of the petition, and shall cause a copy thereof, together with notice of the date so fixed, to be served on the trustee and upon any other person to whom in its opinion notice of the petition should be given.

(2) On the date fixed for the hearing of the petition, or on any subsequent date to which the hearing may be adjourned, the court shall proceed to hear the petitioner and the trustee, if he appears, and any other person who has appeared in consequence of the notice, or who it considers ought to be heard, and shall make such further inquiries, if any, as it thinks fit. The trustee may and, if so required by the court, shall at the time of the first hearing or within such time as the court may permit present a written statement of his case. If he does present a written statement, the statement shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908(5 of 1908), for signing and verifying pleadings.

(3) If any person appears at the hearing of the petition and either denies the existence of the trust or denies that it is a trust to which this Act applies, and undertakes to institute within three months a suit for a declaration to that effect and for any other appropriate relief, the court shall order a stay of the proceedings and, if such suit is so instituted, shall continue the stay until the suit is finally decided.

(4) If no such undertaking is given, or if after the expiry of the three months no such suit has been instituted, the court shall itself decide the question.

(5) On completion of the inquiry provided for in sub-section (2), the Court shall either dismiss the petition or pass thereon such other order as it thinks fit;

Provided that, where a suit has been instituted in accordance with the provisions of sub-section (3), no order shall be passed by the court which conflicts with the final decision therein.

(6) Save as provided in this section, the Court shall not try or determine any question of title between the petitioner and any person claiming title adversely to the trust.

6. Failure of trustee to comply with order under section 5.—If a trustee without reasonable excuse fails to comply with an order made under sub-section (5) of section 5, such trustee shall, without prejudice to any other penalty or liability which he may incur under any law for the time being in force, be deemed to have committed a breach of trust affording ground for a suit under the provisions of section 92 of the Code of Civil Procedure, 1908; and any such suit may, so far as it is based on such failure, be instituted without the previous consent of the Advocate General.

COMMENTS

Section 92 of the Code of Civil Procedure,1908 is as under:

92. *Public charities.*—(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the leave of the court may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situated to obtain a decree—

(a) removing any trustee;

(b) appointing a new trustee;

(c) vesting any property in a trustee;

(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;

(d) directing accounts and inquiries;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863) or by any corresponding law in force in the territories which, immediately before the Ist November,1956, were comprised in Part B States, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

(3) The court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied *cy pres* in one or more of the following circumstances, namely:—

(a) where the original purposes of the trust, in whole or in part,—

(i) have been, as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or

(b) where the original purpose of the trust provides a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in part, have, since they were laid down,—

(i) been adequately provided for by other means, or

(ii) ceased, as being useless or harmful to the community, or

(iii) ceased to be, in law, charitable, or

(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.

7. Powers of trustee to apply for directions.—(1) Save as hereinafter provided in this Act, any trustee of an express or constructive trust created or existing for public purpose of a charitable or religious nature may apply by petition to the court within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate, for the opinion, advice of direction of the court on any question affecting the management or administration of the trust property, and the court shall give its opinion, advice or direction, as the case may be, thereon:

Provided that the court shall not be bound to give such opinion, advice or direction on any question which it considers to be a question not proper for summary disposal.

(2) The court on a petition under sub-section (1), may either give its opinion, advice or direction thereon forthwith, or fix a date for the hearing of the petition, and may direct a copy thereof, together with notice of the date so fixed, to be served on such of the persons interested in the trust, or to be published for information in such manner, as it thinks fit.

(3) On any date fixed under sub-section (2) or on any subsequent date to which the hearing may be adjourned, the Court, before giving any opinion, advice or direction, shall afford a reasonable opportunity of being heard to all persons appearing in connection with the petition.

(4) A trustee stating in good faith the facts of any matter relating to the trust in a petition under sub-section (1), and acting upon the opinion, advice or direction of the Court given thereon, shall be deemed, as far as his own responsibility is concerned, to have discharged his duty as such trustee in the matter in respect of which the petition was made.

COMMENTS

Any trustee can apply by petition to the court for its opinion, advice or direction on any question affecting the management or administration of the trust property.

8. Costs of petition under this Act.—The costs, charges and expenses of and incidental to any petition, and all proceedings in connection therewith, under the forgoing provisions of this Act, shall be in the discretion of the court which may direct the whole or any part of any such costs, charges and expenses to be met from the property or income of the trust in respect of which the petition is made, or to be borne and paid in such manner and by such persons as it thinks fit:

Provided that no such order shall be made against any person (other than the petitioner) who has not received notice of the petition and had a reasonable opportunity of being heard thereon.

COMMENTS

The court has the discritionary power to direct that the whole or any part of any costs, charges and expenses of and incidental to any petition, and all proceedings in connection therewith, be met from the property or income of the trust or be borne and paid in such manner and by such person as it thinks fit. But no such order can be made against any person, other than the petitioner, who

has not received notice of the petition and who has not been given reasonable opportunity of being heard thereon.

9. Savings.—No petition under the foregoing provisions of this Act in relation to any trust shall be entertained in any of the following circumstances, namely:—

(a) if a suit instituted in accordance with the provisions of section 92 of the Code of Civil Procedure, 1908 is pending in respect of the trust in question;

(b) if the trust property is vested in the Treasurer of Charitable Endowments, the Administrator-General, the Official Trustee, or any Society registered under the Societies Registration Act, 1860; or

(c) if a scheme for the administration of the trust property has been settled or approved by any court of competent jurisdiction, or by any other authority acting under the provisions of any enactment.

10. Power of Courts as to costs in certain suits against trustees of charitable and religious trusts.—(1) In any suit instituted under section 14 of the Religious Endowments Act, 1863(20 of 1963), or under section 92 of the Code of Civil Procedure, 1908 (5 of 1908), the court trying such suit may, if, on application of the plaintiff and after hearing the defendant and making such inquiry as it thinks fit, it is satisfied that such an order is necessary in the public interest, direct the defendant either to furnish security for any expenditure incurred or likely to be incurred by the plaintiff in instituting and maintaining such suit, or to deposit from any money in his hands as trustee of the trust to which the suit relates such sum as such court considers sufficient to meet such expenditure in whole or in part.

(2) When any money has been deposited in accordance with an order made under sub-section (1), the court may make over to the plaintiff the whole or any part of such sum for the conduct of the suit. Before making over any sum to the plaintiff, the court shall take security from the plaintiff for the refund of the same in the event of such refund being subsequently ordered by the court.

COMMENTS

Section 14 of the Religious Endowments Act, 1863 (2 of 1863) is as under:

14. Persons interested may singly sue in case of breach of trust, etc.—Any person or persons interested in any mosque, temple or religious establishment, or in the performance of the worship or of the service thereof, or the trusts relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court the trustee, manager or superintendent of such mosque, temple or religious establishment or the member of any committee appointed under this Act, for any misfeasance, breach of trust or neglect of duty committed by such trustee, manager, superintendent or member of such committee, in respect of the trusts vested in, or confided to them respectively;

Powers of Civil Court.—and the Civil Court may direct the specific performance of any act by such trustee, manager, superintendent or member of a committee,

and may decree damages and costs against such trustee, manager, superintendent or member of a committee,

and may also direct the removal of such trustee, manager, superintendent or member of a committee.

11. Provisions of the Code of Civil Procedure to apply.—(1) The provisions of the Code of Civil Procedure, 1908, relating to—

(a) the proof of facts by affidavit,

(b) the enforcing of the attendance of any person and his examination on oath,

(c) the enforcing of the production of documents, and

(d) the issuing of commissions,

shall apply to all proceedings under this Act, and the provisions relating to the service of summonses shall apply to the service of notices thereunder.

(2) The provisions of the said Code relating to the execution of decrees shall, so far as they are applicable, apply to the execution of orders under this Act.

12. Barring of appeals.—No appeal shall lie from any order passed or against any opinion, advice or direction given under this Act[1].



1. In the application of this Act to West Bengal, a new section 13 providing that the provisions of this Act shall not, so far as they are inconsistent with those of the Bengal Wakf Act, 1934 (Ben. 13 of 1934), apply to any Wakf property in West Bengal, has been ins.: *see* Bengal Wakf Act, 1934, section 81.

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THE RELIGIOUS ENDOWMENTS ACT, 1863

INTRODUCTION

For the appropriation of the rents and produce of lands granted for the support of mosques, temples, colleges, and other purposes, for the maintenance and repair of bridges, *sarais, kattras,* and other public buildings; and for the custody and disposal of *nazul* property or escheats, in the Presidency of Fort William in Bengal and the Presidency of Fort Saint George, some duties were imposed on the Boards of Revenue and the local agents by Regulation XIX of 1810 of the Bengal Code and similar duties were imposed in the presidency of Madras by Regulation VII of 1817 of the Madras Code. In order to relieve the Boards of Revenue and the local agents from such duties, so far as those duties related to the superintendence of lands granted for the support of mosques or temples and for other religious uses; the appropriation of endowments made for the maintenance of such religious establishments, the repair and preservation of buildings connected therewith and the appointment of trustees or managers thereof, and to enable the Government to divest itself of the management of such institutions, a Bill was introduced in the Legislature.

STATEMENT OF OBJECTS AND REASONS

It has long been the avowed policy of the Government of India to divest itself of all the direct concern with the management of religious endowments, but the obligations imposed on its Officers by law in the Presidencies of Bengal and Madras present difficulties which have hitherto as far as regards those Presidencies prevented the full accomplishment of this purpose.

The subject has given rise to much correspondence to which it is not necessary more particularly to advert. It may suffice to state that the Secretary of State in his Despatch dated the 16th July, 1860, reviewing the more recent proceedings of the Government of India relative to "the repeal of those provisions of the Bengal and Madras Codes by which the general superintendence of the endowments for the support of Mosques and Temples is vested in the Revenue Officers of Government, expressed an opinion "that all that is requisite is an Act on the principle of Act No. X of 1840 in regard to the Temple of Juggernath, repealing the existing enactments on the subject, and transferring the entire superintendence of the institutions to their respective Trustees, provision being made for an appeal by suit in the ordinary way to the established Courts of Justice in all disputes relating to the appointment and succession to the management of Hindu and Mohammedan religious institutions, and to the control and application of their funds."

Previous to this expression of opinion by the Secretary of State, a Bill had been brought into the Legislative Council early in 1860, simply repealing Regulation XIX, 1810 of the Bengal Code, and Regulation VII, 1817 of the Madras Code, and reserving the jurisdiction now exercised or which but for those Regulations might have been exercised by Courts

of Justice, in enforcing the due execution or administration of any trust or endowment, and in securing the due appointment or succession to the management thereof.

To this proposed measure two objections have been made. First, that by repeal of the Regulations above cited, the Government is relieved of all concern in the management, not only of all religious endowments, but also of other trusts not of a religious character, which those Regulations impose on it, and which is not desirable that it should be relieved of. Second, that a sudden and abrupt relinquishment by Government of the guardianship of the property of religious and charitable endowments which it has so long managed on behalf of the public, without making due provision for their future management, would be unjust.

Concurring in these objections I have endeavoured to frame this Bill so as to carry out the object proposed by the Secretary of State, without interfering with the provisions of the existing law so far as they define the duty of Government and its officers in respect to public property not connected with religious endowments, and at the same time to provide for the due supervision of religious endowments which are now managed by the Government and its officers, but from which they will henceforth be disconnected.

ACT 20 OF 1863

The Bill having been passed by the Legislature received its assent on 10th March, 1863. The short title was given by the Indian Short Titles Act, 1897 (14 of 1897). It came on the Statute Book as THE RELIGIOUS ENDOWMENTS ACT, 1863 (20 of 1863).

LIST OF AMENDING ACTS AND ADAPTATION ORDERS

1. The Court-fees Act, 1870 (7 of 1870).
2. The Repealing Act, 1870 (14 of 1870).
3. The Repealing Act, 1874 (16 of 1874).
4. The Repealing and Amending Act, 1891 (12 of 1891).
5. The Religious Endowments (Amendment) Act, 1925 (21 of 1925).
6. The Arbitration Act, 1940 (10 of 1940).
7. The Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.
8. The Adaptation of Laws Order, 1950.
9. The Delegated Legislation Provisions (Amendment) Act, 1983 (20 of 1983).

THE RELIGIOUS ENDOWMENTS ACT, 1863

(20 of 1863)

[*10th March, 1863*]

An Act to enable the Government to divest itself of the management of Religious Endowments.

Preamble.—WHEREAS it is expedient to relieve the Boards of Revenue, and the Local Agents, in the Presidency of Fort William in Bengal, and the Presidency of Fort Saint George, from the duties imposed on them by Regulation XIX, 1810 (Ben. Reg. 19 of 1810), of the Bengal Code (for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples, Colleges, and other purposes; for the maintenance and repair of Bridges, Sarais, Kattras, and other public buildings; and for the custody and disposal of Nazul Property or Escheats), and Regulation VII, 1817 (Mad. Reg. 7 of 1817), of the Madras Code (for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples and Colleges or other public purposes; for the maintenance and repair of Bridges, Choultries, or Chattrams, and other public buildings; and for the custody and disposal of Escheats), so far as those duties embrace the superintendence of lands granted for the support of Mosques or Hindu Temples and for other religious uses; the appropriation of endowments made for the maintenance of such religious establishments; the repair and preservation of buildings connected therewith, and the appointment of trustees or managers thereof; or involve any connection with the management of such religious establishments; [1][***]. It is enacted as follows:—

1. Repeal of parts of Bengal Regulation XIX of 1810 and Madras Regulation VII of 1817.—[*Rep. by the Repealing Act, 1870 (14 of 1870), sec. 1 and Sch.*]

2. Interpretation clause.—In this Act—

[2][***]

[3][***]

"Civil Court" and "Court".—The words "Civil Court" and "Court" shall [4][save as provided in section 10] mean the principal Court of original civil jurisdiction in the District in which [5][or any other Court empowered in that behalf by the [6][State Government] within the local limits of the jurisdiction of which] the mosque, temple or religious establishment is situated, relating to which, or to the endowment whereof, any suit shall be instituted or application made under the provisions of this Act.

3. Government to make special provision respecting mosques, etc.—In the case of every mosque, temple or other religious establishment to which the provisions of either of the Regulations specified in [7][the Preamble to this Act] are applicable, and nomination of the trustee, manager or superintendent thereof, at the time of the passing of this

1. The words and figures "and whereas it is expedient for that purpose to repeal so much of Regulation 19, 1810, of the Bengal Code, and Regulation 7, 1817, of the Madras Code, as relate to endowments for the support of mosques, Hindu temples or other religious purposes" rep. by Act 16 of 1874, sec. 1 and Sch.
2. The clause relating to "number" rep. by Act 10 of 1914, sec. 3 and Sch. II.
3. The clause relating to "gender" rep. by Act 10 of 1914, sec. 3 and Sch. II.
4. Ins. by Act 21 of 1925, sec. 2.
5. Ins. by Act 21 of 1925, sec. 2.
6. Subs. by the A.O. 1950, for "Provincial Government".
7. Subs. by Act 12 of 1891, sec. 2 and Sch. II, for "section 1".

Act, is vested in, or may be exercised by, the Government, or any public officer, or in which the nomination of such trustee, manager or superintendent shall be subject to the confirmation of the Government or any public officer, the [1][State Government] shall, as soon as possible after the passing of this Act, make special provision as hereinafter provided.

COMMENTS

In the case of every mosque, temple or other religious establishment to which provisions of Regulation XIX, 1810, of the Bengal Code and Regulation VII, 1817, of the Madras Code are applicable, and nomination of the trustee, manager or superintendent thereof, at the time of passing of this Act, has been vested in the Government.

4. Transfer to trustees, etc., of trust-property in charge of Revenue Board.—In the case of every such mosque, temple or other religious establishment which, at the time of the passing of this Act, shall be under the management of any trustee, manager or superintendent, whose nomination shall not vest in, nor be exercised by, nor be subject to the confirmation of, the Government, or any public officer, the [1][State Government] shall, as soon as possible after the passing of this Act, transfer to such trustee, manager or superintendent, all the landed or other property which, at the time of the passing of this Act, shall be under the superintendence or in the possession of the Board of Revenue, or any local agent, and belonging to such mosque, temple or other religious establishment, except such property as is hereinafter provided:

Cessation of Board's powers as to such property.—And the powers and responsibilities of the Board of Revenue, and the local agents, in respect to such mosque, temple or other religious establishment, and to all land and other property so transferred, except as regards acts done and liabilities incurred by the said Board of Revenue or any local agent, previous to such transfer, shall cease and determine.

COMMENTS

In the case of every mosque, temple or other religious establishment which, at the time of passing of this Act, shall be under the management of any trustee, manager, or superintendent, whose nomination shall not vest in, nor be exercised by, nor be subject to the confirmation of, the Government, the State Government shall transfer to such trustee, manager or superintendent all the landed or other property which shall be under the superintendence or in possession of the Board of Revenue or any local agent, and the powers and responsibilities of the Board of Revenue and the local agent shall cease and determine.

***5. Procedure in case of dispute as to right of succession to vacated trusteeship.**—Whenever from any cause a vacancy shall occur in the office of any trustee, manager, or superintendent, to whom any property shall have been transferred under the last preceding section, and any dispute shall arise respecting the right of succession to such office, it shall be lawful for any person interested in the mosque, temple or religious establishment, to which such property shall belong, or in the performance of the worship or of the service thereof, or the trusts relating thereto, to apply to the Civil Court to appoint a manager of such mosque, temple or other religious establishment, and thereupon such Court may appoint such manager, to act until some other person shall by suit have established his right of succession to such office.

Powers of managers appointed by Court.—The manager so appointed by the Civil Court shall have, and shall exercise, all the powers which, under this or any other Act, the former trustee, manager, or superintendent, in whose place such manager is appointed, by the Court, had or could exercise, in relation to such mosque, temple or religious establishment, or the property belonging thereto.

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1. Subs. by the A.O. 1950, for "Provincial Government".

* Section 5 shall not apply to any wakf to which the Wakf Act, 1954 (29 of 1954) applies.

6. Rights, etc., of trustees to whom property is transferred under section 4.—The rights, powers, and responsibilities of every trustee, manager or superintendent, to whom the land and other property of any mosque, temple or other religious establishment is transferred in the manner prescribed in section 4 of this Act, as well as the conditions of their appointment, election and removal, shall be the same as if this Act had not been passed, except in respect of the liability to be sued under this Act, and except in respect of the authority of the Board of Revenue, and local agents, given by the Regulations hereby repealed, over such mosque, temple or religious establishment, and over such trustee, manager, or superintendent, which authority is hereby determined and repealed.

All the powers which might be exercised by any Board or local agent, for the recovery of the rent of land or other property transferred under the said section 4 of this Act, may, from the date of such transfer, be exercised by any trustee, manager or superintendent to whom such transfer is made.

7. Appointment of committees.—In all cases described in section 3 of this Act, the [1][State Government] shall once for all appoint one or more committees in every division or district, to take the place, and to exercise the powers, of the Board of Revenue and the local agents under the Regulations hereby repealed.

Constitution and duties of committees.—Such committee shall consist of three or more persons, and shall perform all the duties imposed on such Board and local agents, except in respect of any property which is specially provided for under section 21 of this Act.

COMMENTS

To take the place, and to exercise the powers of the Board of Revenue and the local agents, the State Government shall appoint one or more committees in every division or district.

8. Qualifications of member of committee.—The members of the said committee shall be appointed from among persons professing the religion for the purposes of which the mosque, temple or other religious establishment was founded or is now maintained, and in accordance, so far as can be ascertained, with the general wishes of those who are interested in the maintenance of such mosque, temple or other religious establishment.

The appointment of the committee shall be notified in the Official Gazette.

Ascertaining wishes of persons interested.—In order to ascertain the general wishes of such persons in respect of such appointment, the [1][State Government] may cause an election to be held, under such rules [2][, by notification in the Official Gazette] not inconsistent with the provisions of this Act, as shall be framed by such [1][State Government].

[2][Every rule framed under this section shall be laid, as soon as it is framed, before the State Legislature.]

9. Tenure of office.—Every member of a committee appointed as above shall hold his office for life, unless removed for misconduct or unfitness;

Removal.—and no such member shall be removed except by an order of the Civil Court as hereinafter provided.

10. Vacancies to be filled.—Whenever any vacancy shall occur among the members of a committee appointed as above, a new member shall be elected to fill the vacancy by the persons interested as above provided.

Procedure.—The remaining members of the committee shall, as soon as possible, give public notice of such vacancy, and shall fix a day, which shall not be later than three months from the date of such vacancy, for an election of a new member by the persons

1. Subs. by the A.O. 1950, for "Provincial Government".
2. Ins. by Act 20 of 1983, sec. 2 and Sch. (w.e.f. 15-3-1984).

interested as above provided, under rules for elections which shall be framed by the [1][State Government];

and whoever shall be then elected, under the said rules, shall be a member of the committee to fill such vacancy.

When Court may fill vacancy.—If any vacancy as aforesaid shall not be filled up by such election as aforesaid within three months after it has occurred, the Civil Court, on the application of any person whatever, may appoint a person to fill the vacancy or may order that the vacancy be forthwith filled up by the remaining members of the committee, with which order it shall then be the duty of such remaining members to comply; and if this order be not complied with, the Civil Court may appoint a member to fill the said vacancy.

[2][*Explanation.*—In this section "Civil Court" means the principal Court of original civil jurisdiction in the district in which the mosques, temples or religious establishments for which the committee has been appointed or any of them are situated].

11. No member of committee to be also trustee, etc. of mosque, etc.—No member of a committee appointed under this Act shall be capable of being, or shall act, also as a trustee, manager or superintendent of the mosque, temple or other religious establishment for the management of which such committee shall have been appointed.

COMMENTS

No member of the committee can act as trustee, manager or superintendent of the mosque, temple or other religious establishment for the management of which such committee has been appointed.

12. On appointment of committee, Board and local agents to transfer property.—Immediately on the appointment of a committee as above provided for the superintendence of any such mosque, temple or religious establishment, and for the management of its affairs, the Board of Revenue, or the local agents acting under the authority of the said Board, shall transfer to such committee all landed or other property which at the time of appointment shall be under the superintendence, or in the possession of the said Board or local agents, and belonging to the said religious establishment, except as is hereinafter provided for.

Termination of powers and responsibilities of Board and Agents.—and thereupon the powers and responsibilities of the Board and the local agents, in respect to such mosque, temple or religious establishment, and to all land and other property so transferred except as above, and except as regards acts done and liabilities incurred by the said Board or agents previous to such transfer, shall cease and determine.

Commencement of powers of committee.—All the powers which might be exercised by any Board or local agent for the recovery of the rent of land or other property transferred under this section may from the date of such transfer be exercised by such committee to whom such transfer is made.

13. Duty of trustee, etc., as to accounts.—It shall be the duty of every trustee, manager and superintendent of a mosque, temple or religious establishment to which the provisions of this Act shall apply to keep regular accounts of his receipts and disbursements in respect of the endowments and expenses of such mosque, temple or other religious establishment;

and of committee.—and it shall be the duty of every committee of management, appointed or acting under the authority of this Act, to require from every trustee, manager and superintendent of such mosque, temple or other religious establishment,

1. Subs. by the A.O. 1950, for "Provincial Government".
2. Ins. by Act 21 of 1925, sec. 3.

the production of such regular accounts of such receipts and disbursements at least once in every year; and every such committee of management shall themselves keep such accounts thereof.

14. Persons interested may singly sue in case of breach of trust, etc.—Any person or persons interested in any mosque, temple or religious establishment, or in the performance of the worship or of the service thereof, or the trusts relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court the trustee, manager or superintendent of such mosque, temple or religious establishment or the member of any committee appointed under this Act, for any misfeasance, breach of trust or neglect of duty, committed by such trustee, manager, superintendent or member of such committee, in respect of the trusts vested in, or confided to, them respectively;

Powers of Civil Court.—and the Civil Court may direct the specific performance of any act by such trustee, manager, superintendent or member of a committee,

and may decree damages and costs against such trustee, manager, superintendent or member of a committee,

and may also direct the removal of such trustee, manager, superintendent or member of a committee.

15. Nature of interest entitling person to sue.—The interest required in order to entitle a person to sue under the last preceding section need not be a pecuniary, or a direct or immediate, interest or such an interest as would entitle the person suing to take any part in the management or superintendence of the trusts.

Any person having a right of attendance, or having been in the habit of attending, at the performance of the worship or service of any mosque, temple or religious establishment, or of partaking in the benefit of any distribution of alms, shall be deemed to be a person interested within the meaning of the last preceding section.

16. Reference to arbitrators.—In any suit or proceeding instituted under this Act it shall be lawful for the Court before which such suit or proceeding is pending to order any matter in difference in such suit to be referred for decision to one or more arbitrators.

Act 10 of 1940 applied.—Whenever any such order shall be made, the provisions of [1][Chapter IV of the Arbitration Act, 1940 (10 of 1940)] shall in all respects apply to such order and arbitration, in the same manner as if such order had been made on the application of the parties under [2][section 21 of the said Act].

17. Reference under Act 10 of 1940.—Nothing in the last preceding section shall prevent the parties from applying to the Court, or the Court from making the order of reference, under the said [2][section 21 of the Arbitration Act, 1940].

18. Application for leave to institute suits.—No suit shall be entertained under this Act without a preliminary application being first made to the Court for leave to institute such suit, [3][***]

The Court, on the perusal of the application, shall determine whether there are sufficient *prima facie* grounds for the institution of a suit, and, if in the judgment of the Court there are such grounds, leave shall be given for its institution.

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1. Subs. by Act 10 of 1940, sec. 49 and Sch. IV, for "Chapter VI of the said Code of Civil Procedure" (w.e.f. 1-7-1940).
2. Subs. by Act 10 of 1940, sec. 49 and Sch. IV, for "section 312 of the said Code" (w.e.f. 1-7-1940).
3. The words "The application may be made upon unstamped paper" rep. by Act 7 of 1870, sec. 2 and Sch. III.

Costs.—[1][***] If the Court shall be of opinion that the suit has been for the benefit of the trust, and that no party to the suit is in fault, the Court may order the costs or such portion as it may consider just to be paid out of the estate.

19. Court may require accounts of trust to be filed.—Before giving leave for institution of a suit, or, after leave has been given, before any proceeding is taken, or at any time when the suit is pending, the Court may order the trustee, manager or superintendent, or any member of a committee, as the case may be, to file in Court the accounts of the trust, or such part thereof as to the Court may seem necessary.

20. Proceedings for criminal breach of trust.—No suit or proceeding before any Civil Court under the preceding sections shall in any way affect or interfere with any proceeding in a Criminal Court for criminal breach of trust.

21. Cases in which endowments are partly for religious and partly for secular purposes.—In any case in which any land or other property has been granted for the support of an establishment partly of a religious and partly of a secular character,

or in which the endowment made for the support of an establishment is appropriated partly to religious and partly to secular uses,

the Board of Revenue, before transferring to any trustee, manager or superintendent, or to any committee of management appointed under this Act, shall determine what portion, if any, of the said land or other property shall remain under the superintendence of the said Board for application to secular uses,

and what portion shall be transferred to the superintendence of the trustee, manager or superintendent, or of the committee,

and also what annual amount, if any, shall be charged on the land or other property which may be so transferred to the superintendence of the said trustee, manager or superintendent, or of the committee, and made payable to the said Board or to the local agents, for secular uses as aforesaid.

In every such case the provisions of this Act shall take effect only in respect to such land and other property as may be so transferred.

22. Government not to hold charge henceforth of property for support of any mosque, temple, etc.—Except as provided in this Act, it shall not be lawful [2][***] for [3][the Central Government or any State Government], or for any officer of any Government in his official character,

to undertake or resume the superintendence of any land or other property granted for the support of, or otherwise belonging to, any mosque, temple or other religious establishment, or

to take any part in the management or appropriation of any endowment made for the maintenance of any such mosque, temple or other establishment, or

to nominate or appoint any trustee, manager or superintendent thereof, or to be in any way concerned therewith.*

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1. The words "In calculating the costs at the termination of the suit, the stamp duty on the preliminary application shall be estimated, and shall be added to the costs of the suit" rep. by Act 7 of 1870, sec. 2 and Sch. III.
2. The words "after the passing of this Act" rep. by Act 16 of 1974, sec. 1 and Sch.
3. Subs. by the A.O. 1948, for "any Government in India" (w.e.f. 23-3-1948).

* A proviso to section 22 has been added to apply only to Bengal by the Bengal Wakf Act, 1934 (Ben. Act 13 of 1934).

COMMENTS

The Central Government or any State Government or any officer of any Government in his official character cannot (i) undertake or resume the superintendence of any land or other property granted for the support of, or otherwise belonging to any mosque, temple or other religious establishment; (ii) take part in the management or appropriation of any endowment made for the maintenance of any such mosque, temple or other establishment; (iii) nominate or appoint any trustee, manager or superintendent thereof, or to be in any way connected therewith.

23. Effect of Act in respect of Regulations therein mentioned, and of buildings of antiquity, etc.—Nothing in this Act shall be held to affect the provisions of the *Regulations mentioned in this Act, except in so far as they relate to mosques, Hindu temples and other religious establishments; or to prevent the Government from taking such steps as it may deem necessary, under the provisions of the said Regulations, to prevent injury to and preserve buildings **remarkable for their antiquity, or for their historical or architectural value, or required for the convenience of the public.***

24. "India".—[*Rep. by the A.O. 1948.*]



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* Namely the Bengal Charitable Endowments, Public Buildings and Escheats Regulation, 1810 (Ben. Reg. 19 of 1810), and Madras Endowments and Escheats Regulation, 1817 (Mad. Reg. 7 of 1817).

** *See* now also the Ancient Monuments Preservation Act, 1904 (7 of 1904).

*** A new section 23A has been added to apply only to Bengal by the Bengal Wakf Act, 1934 (Ben. Act 13 of 1934).

25

THE TRANSFER OF PROPERTY ACT, 1882

(Relevant Extracts)

5. **"Transfer of property" defined.**—In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons; and "to transfer property" is to perform such act.

In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.

6. **What may be transferred.**—Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force,—

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred;

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby;

(c) An easement cannot be transferred apart from the dominant heritage;

(d) All interest in property restricted in its enjoyment to the owner personally cannot be transferred by him;

(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred;

(e) A mere right to sue cannot be transferred;

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable;

(g) Stipends allowed to military, naval, air-force and civil pensioners of the Government and political pensions cannot be transferred;

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872 (9 of 1872), or (3) to a person legally disqualified to be transferee;

(i) Nothing in this section shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate, under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.

7. Persons competent to transfer.—Every person competent to contract and entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force.

8. Operation of transfer.—Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the moveable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

9. Oral transfer.—A transfer of property may be made without writing in every case in which a writing is not expressly required by law.

10. Condition restraining alienation.—Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him:

Provided that property may be transferred to or for the benefit of a women (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

11. Restriction repugnant to interest created.—Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Where any such direction has been made in respect of one piece of immoveable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.

12. Condition making interest determinable on insolvency or attempted alienation.—Where property is transferred subject to a condition or limitation making any interest therein, reserved or given to or for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

13. Transfer for benefit of unborn person.—Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the

transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

14. Rule against perpetuity.—No transfer of property can operate to create an interest which is to take effect after the life-time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

15. Transfer to class some of whom come under sections 13 and 14.—If, on a transfer of property, an interest therein is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14, such interest fails in regard to those persons only and not in regard to the whole class.

16. Transfer to take effect on failure of prior interest.—Where, by reason of any of the rules contained in sections 13 and 14, an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

17. Direction for accumulation.—(1) Where the terms of a transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than—

(a) the life of the transferor, or

(b) a period of eighteen years from the date of transfer,

such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the longer of the aforesaid periods, and at the end of such last-mentioned period the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of—

(i) the payment of the debts of the transferor or any other person taking any interest under the transferor; or

(ii) the provision of portions for children or remoter issue of the transferor or of any other person taking any interest under the transfer; or

(iii) the preservation or maintenance of the property transferred,

and such direction may be made accordingly.

18. Transfer in perpetuity for benefit of public.—The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind.

19. Vested interest.—Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation.—An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or

whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person.

20. **When unborn person acquires vested interest on transfer for his benefit.**— Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appears from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

21. **Contingent interest.**—Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

Exception.—Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

22. **Transfer to members of a class who attain a particular age.**—Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

23. **Transfer contingent on happening of specified uncertain event.**—Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

24. **Transfer to such of certain persons as survive at some period not specified.**— Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.



26

THE REGISTRATION ACT, 1908

(Relevant Extracts)

17. Documents of which registration is compulsory.—(1) The following documents shall be registered, if the property to which they relate is situated in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.

(2) Nothing in clauses (b) and (c) of sub-section (l) applies to—

(i) any composition deed; or

(ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) any document other than the documents specified in sub-section (1A) not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or

(vii) any grant of immovable property by Government; or

(viii) any instrument of partition made by a Revenue-Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or

(x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or

(xa) any order made under the Charitable Endowments Act, 1890, (6 of 1890) vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer.

Explanation.—A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.

47. Time from which registered document operates.—A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

49. Effect of non-registration of documents required to be registered.—No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.

50. Certain registered documents relating to land to take effect against unregistered documents.—(1) Every document of the kinds mentioned in clauses (a), (b), (c), and (d) of section 17, sub-section (1), and clauses (a) and (b) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

(2) Nothing in sub-section (1) applies to leases exempted under the proviso to sub-section (1) of section 17 or to any document mentioned in sub-section (2) of the same section, or to any registered document which had not priority under the law in force at the commencement of this Act.

Explanation.— In cases where Act No. 16 of 1864 or the Indian Registration Act, 1866 (20 of 1866), was in force in the place and at the time in and at which such unregistered document was executed, "unregistered" means not registered according to such Act, and, where the document is executed after the first day of July, 1871, not registered under the Indian Registration Act, 1871 (8 of 1971), or the Indian Registration Act, 1877 (3 of 1977), or this Act.



27

SPECIMEN TRUST DEED FOR A HOSPITAL

This Trust Deed made the.............. day of ....20...... between .... (hereinafter called the Donor) of the part and .... and .... and .... who and their successors are (hereinafter called the Trustees) of the other part;

Whereas the Donor being in possession as beneficial owner and free from incumbrances of the property hereby intended to be conveyed and transferred is desirous to establish, maintain and operate a safe and accessible hospital for in-patient and out patient medical or surgical care of poor persons in need thereof;

And whereas the Trustees have agreed to act as members of the Committee of Management of the said hospital and to take steps to establish the same by means of money collected or to be collected for that purpose (or by means of money provided or to be provided by the Donor) and have further agreed to act as Trustees of the said property for the purposes of the proposed hospital:

Now this Trust-deed witnesseth:—

1. That the Donor hereby conveys and transfers unto the trustees, ________________ square yards of land and bounded and butted as follows:—

East	West
South	North

and marked in red on the map annexed hereto, together with all buildings, out-buildings, lands, yards, trees, shrubs, rights and easements attached or appurtenant of the same and all the right, title and interest of the Donor therein;

To hold the same unto and for the use of the Trustees free from incumbrance upon Trust, to permit the same and all the building and buildings which may hereafter be erected thereon in addition to or in place of existing buildings to be used as a hospital for poor persons in sickness and to provide facilities including and not limited to clinic, dispensary, physician center, surgery centre, diagnostic facilities, housing units, sheltered care facilities and ambulance facilities subject to such rules and regulations as shall be for the time being in force for the management and government thereof and subject also to the following provisions:—

1. That the Trustees for the time being hereof shall have full powers to frame rules and regulations for the management and government of the said hospital and funds and property thereof and may from time to time make such charges for the reception, care and treatment of any person admitted to the Hospital as they shall see fit, provided always that income arising from such charges be applied solely towards and for the charitable purposes of the Hospital within the State; and the said rules, regulations shall come into force and effect immediately on being published by affixation in some prominent place on the said premises.

2. That the said rules and regulations shall include rules for the following among other purposes:—
   (1) Rules regulating the meetings of the Trustees or the Committee of Management;
   (2) Rules providing for the investment of money not required for the immediate purpose of the hospital in immovable property or in securities authorized by the law in force for the time being regulating the investment of trust funds, and for the keeping and the auditing of accounts; and
   (3) Rules providing for the revision, alteration and addition to the existing rules.
3. The Trustees shall have full power to erect and complete, fit up and furnish the necessary building or buildings and to make all such arrangements in relation to the establishment of the said hospital as they shall think fit.
4. The Trustees shall have the power, during the life time of the donor with is consent in writing, and afterwards at their discretion, to sell the said premises and the buildings thereon any part thereof or exchange the same for other land or building, with liberty to give or receive money for equality of exchange, or to raise any sum or sums by mortgage of the said premises or any part thereof, and to apply the money to arise from any such sale, to be received for equality of exchange, or to be raised by any such mortgage as aforesaid, for adding to the general funds of the hospital or for the purchase of other land or buildings or for the erection of new or additional buildings or for repairs, alterations or improvements or for any other purpose for which the general funds of the hospital shall be applicable under the existing rules and regulations thereof.
5. The Trustees may give the said premises or any part thereof or any land or building vested in them which may not for the time being be required for the purpose of the hospital, to any person or persons either from year to year or for any term of years at such rent and subject to such conditions and covenants as they may think fit; and the rents received upon any such lease shall be put in the general funds of the hospital and be applicable accordingly.
6. The receipt of the Trustees for any money payable upon any sale, exchange or mortgage or for any rent received upon any such lease as aforesaid shall be sufficient discharge for the same to any purchaser, mortgagee, lessee or any other person dealing with the Trustees; and such purchaser, mortgagee, lessee or other person shall not be bound or concerned to see to the application of the said money or rent.
7. Whenever there shall be a vacancy in the Trusteeship caused by death, resignation, removal or any other cause, the Donor, so long as he is alive, and after his death the remaining Trustees, shall appoint one or more Trustee or Trustees to fill the vacancy, provided that the number of Trustees shall never be more than five or less than three.

In witness whereof, the parties hereto have hereunto set their respective hands:

Witnesses:

1. (Signature of the Donor)

2. (Signatures of the Trustees)



28

Specimen Trust Deed for a School

This Trust Deed is made on the....................day of....................between 'A' etc., hereinafter called the Founder of the one part and 'B', 'C' and 'D' etc. etc. hereinafter called the Trustees of the other part.

Whereas the Founder is the absolute owner of properties, more particularly described in Schedule 'A' annexed hereto this Deed.

Whereas the Founder is desirous of endowing the said property for the purposes of founding a school in the city of....................for the education of boys and girls in the educative and vocational pursuits.

And whereas the Trustees have agreed to carry out the Trust herein created.

Now it is hereby agreed as follows:—

1. *The objects of the trust are:*—(a) To open, run and continue a school for the education of boys and girls and to develop character of the students as well as to educate them on a balanced and broadly based curriculum which promotes the spiritual, moral, cultural, mental and physical development of pupils, besides knowledge instruction which prepares the pupils for the oportunities, responsibilities and experiences of adult life.

(b) To establish and maintain a boarding house for the students who receive education in the school.

(c) To carry on any other object which may seem to the Trustees capable of being conveniently carried on in connection with the above objects or calculated directly or indirectly to advance the objects (a) and (b) of the Trust.

2. *Declaration of the Trust:*—The Founder as absolute owner conveys the land and buildings mentioned in Schedule 'A' as well as has delivered his movable assets consisting of cash amounting to Rs. ....and shares of incorporated companies as mentioned in Scheduled 'B' to the trustees to hold the same upto and to use of the Trustees upon trust and with under and subject to the powers and provisions herein contained.

3. *Powers and Duties of the Trustees:*—(a) The trustees shall erect on the land mentioned in Schedule 'A' a building suitable for a school and Boarding House in accordance with plan annexed. The trustees are empowered to demolish building on the said land if they think it necessary for erecting a building for the school and Boarding House and the trustees of the school control the use of the school premises both during and outside school hours.

(b) The trustees shall employ such staff as they think necessary for providing education to the students as well as to develop their physique and character on such salaries as they think fit and replace them whenever they think necessary. The trustees shall also employ and remove other servants which they consider necessary for the purpose. The trustees cannot provide any service that may interfere with their main duty to educate pupils or their responsibility to promote high standards of educational achievement at the school.

(c) Out of the income of the trust fund the trustees shall defray the expenses for running the school and Boarding House as aforesaid and expenses for erecting building of the school and Boarding House, but if the income is insufficient for that purpose the trustees may use such portion of the corpus of the trust fund as may be necessary.

(d) The trustees shall have the power to borrow money on the security of the trust property and to alienate the trust property for necessary purpose.

(e) The trustees may invest the surplus fund in their hands in such securities as they deem fit.

4. The Founder shall also be one of the trustees during his life and after his death the eldest male member of his family shall be a co-trustee.

5. If any of the trustees becomes bankrupt or found guilty by court of an offence involving moral turpitude or becomes insolvent or remains absent from India for a period of three months or resigns from his post or otherwise incapacitated physically, the remaining trustees with the consent of the Founder so long as he is alive shall appoint his substitute.

6. In case there is a difference of opinion between the trustees the decision of the majority of the trustees relating to the trust shall be binding and be effected and shall be carried out.

7. In case of failure of the trust for want of its objects or trust having become impossible or performance, the trustees shall move the court for applying the remaining trust fund for similar objects.

8. The trustees shall in no case be liable for any loss to the trust estate unless the trustees are guilty of fraud.

9. This is a public registered trust. The property of the trust shall in no case revert to the Founder or his descendents or to any other person.

10. No part of the trust fund, either the corpus or the income therefrom, shall be utilized for any object other than that of the trust hereby created.

11. For the purpose of assessing stamp duty the value of the trust property is assessed as follows:—

Value of the property in schedule 'A' is Rs....................

Value of the assets in schedule 'B' is Rs....................

Total value on which the stamp duty of Rs....................is paid Rs....................under Article 64 of the Indian Stamp Act.

In witness whereof the parties hereto have hereunto set their hands.

Witnesses:

1. (Signature of Founder)
2. (Signature of Trustees)



PART H
NON-PROFIT COMPANY

29

COMPANIES ACT, 2013

8. Formation of companies with charitable objects, etc.—(1) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—

(a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity protection of environment or any such other object;

(b) intends to apply its profits, if any, or other income in promoting its objects; and

(c) intends to prohibit the payment of any dividend to its members,

the Central Government may, by licence issued in such manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited" and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section.

(2) The company registered under this section shall enjoy all the privileges and be subject to all the obligations of limited companies.

(3) A firm may be a member of the company registered under this section.

(4) (i) A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.

(ii) A company registered under this section may convert itself into company of any other kind only after complying with such conditions as may be prescribed.

(5) Where it is proved to the satisfaction of the Central Government that a limited company registered under this Act or under any previous company law has been formed with any of the objects specified in clause (a) of sub-section (1) and with the restrictions and prohibitions as mentioned respectively in clauses (b) and (c) of that sub-section, it may, by licence, allow the company to be registered under this section subject to such conditions as the Central Government deems fit and to change its name by omitting the word "Limited", or as the case may be, the words "Private Limited" from its name and thereupon the Registrar shall, on application in the prescribed form, register such company under this section and all the provisions of this section shall apply to that company.

(6) The Central Government may, by order, revoke the licence granted to a company registered under this section if the company contravenes any of the requirements of this section or any of the conditions subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest, and without prejudice to any other action against the company under this Act, direct the company to convert its status and change its name to add the word "Limited" or the words "Private Limited", as the case may be, to its name and thereupon the Registrar shall, without prejudice to any action that may be taken under sub-section (7), on application, in the prescribed form, register the company accordingly:

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard:

Provided further that a copy of every such order shall be given to the Registrar.

(7) Where a licence is revoked under sub-section (6), the Central Government may, by orders, if it is satisfied that it is essential in the public interest, order that the company be wound up under this Act or amalgamated with another company registered under this section:

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard.

(8) Where a licence is revoked under sub-section (6) and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

(9) If on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to the Rehabilitation and Insolvency Fund formed under section 269.

(10) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.

(11) If a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees, or with both:

Provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.



30

Model Declaration by an Advocate/ Chartered Accountant Stating that Requirements of the Companies Act, 2013 and the Rules made thereunder have been Complied with

In the matter of .... (Name of the Company)

I, ...do, hereby solemnly and sincerely declare that I am a Chartered Accountant./Advocate practising in India and representing the above named company:

That the Memorandum and Articles of Association of the said Company have been drawn up in conformity with the provisions of the Companies Act 2013;

That all the requirements of the said Act and the Rules made thereunder have been duly complied with in respect of registration and matters incidental or supplemental thereto:

And I make this declaration conscientiously, believing the same to be true.

Chartered Accountant/Advocate

Designation

Date ....20......

Place ....

Witness 1.

2.



31

Statement of the Grounds for Application under section 8 of the Companies Act, 2013

The proposed association will undertake the objects as mentioned in clause (state here clause No. of the memorandum) of the memorandum of association which are reproduced below:

(i)

(ii)

The proposed association will not pursue any activity with the object of earning profits. It will mainly function to (state here purposes of association). The funds of the proposed association shall be utilized only for the purpose of the benefits of its members and achievement of its objects. The proposed association will promote objects beneficial to the country and the society. The application for grant of licence under section 8 of the Companies Act, 2013 is accordingly made.



Part I

Foreign Contribution

32

THE FOREIGN CONTRIBUTION (REGULATION) ACT, 1976

INTRODUCTION

In the recent past it was noticed that some of the foreign countries had started funding individuals, associations, political parties, candidates for elections, correspondents, columnist, editors, owners, printers or publishers of newspapers. They were also extending hospitality. The effects of such funding contributions and hospitality were noticeable and it was felt necessary to have some control over such contributions and hospitality being extended. To regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain persons or associations, with a view to ensuring that Parliamentary institutions, political associations and academic and other voluntary organisations as well as individuals working in the important areas of national life may function in a manner consistent with the values of a sovereign democratic republic, the Foreign Contribution (Regulation) Bill was introduced in the Parliament.

ACT 49 OF 1976

The Foreign Contribution (Regulation) Bill having been passed by both the Houses of Parliament received the assent of the President on 31st March, 1976. It came on the Statute Book as THE FOREIGN CONTRIBUTION (REGULATION) ACT, 1976 (49 of 1976).

AMENDING ACT

The Foreign Contribution (Regulation) Amendment Act, 1985 (1 of 1985).

THE FOREIGN CONTRIBUTION (REGULATION) ACT, 1976

(49 of 1976)

[*31st March, 1976*]

An Act to regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain persons or associations, with a view to ensuring that parliamentary institutions, political associations and academic and other voluntary organisations as well as individuals working in the important areas of national life may function in a manner consistent with the values of a sovereign democratic republic, and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent, application and commencement.—(1) This Act may be called the Foreign Contribution (Regulation) Act, 1976.

(2) It extends to the whole of India, and it shall also apply to—

(a) citizens of India outside India; and

(b) associates, branches or subsidiaries, outside India, of companies or bodies corporate, registered or incorporated in India.

(3) It shall come into force on such date[1] as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—(1) In this Act, unless the context otherwise requires,—

(a) "association" means an association of individuals, whether incorporated or not, having an office in India and includes a society, whether registered under the Societies Registration Act, 1860 (21 of 1860), or not, and any other organisation, by whatever name called;

(b) "candidate for election" means a person who has been duly nominated as a candidate for election to any Legislature;

(c) "foreign contribution" means the donation, delivery or transfer made by any foreign source,—

(i) of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, does not exceed one thousand rupees;

(ii) of any currency, whether Indian or foreign;

(iii) of any foreign security as defined in clause (i) of section 2 of the Foreign Exchange Regulation Act, 1973 (46 of 1973).

[2][*Explanation*.—A donation, delivery or transfer of any article, currency or foreign security referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution within the meaning of this clause;]

(d) "foreign hospitality" means any offer, not being a purely casual one, made by a foreign source for providing a person with the costs of travel to any foreign country or territory or with free board, lodging, transport or medical treatment;

1. Came into force on 5-8-1976, *vide* G.S.R. 755(E), dated 5th August, 1976.
2. Ins. by Act 1 of 1985, sec. 2 (w.e.f. 20-10-1984).

(e) "foreign source" includes—

(i) the Government of any foreign country or territory and any agency of such Government,

(ii) any international agency, not being the United Nations or any of its specialised agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification in the Official Gazette, specify in this behalf,

(iii) a foreign company within the meaning of section 591 of the Companies Act, 1956, (1 of 1956), and also includes—

(a) a company which is a subsidiary of a foreign company, and

(b) a multi-national corporation within the meaning of this Act,

(iv) a corporation, not being a foreign company, incorporated in a foreign country or territory,

(v) a multi-national corporation within the meaning of this Act,

(vi) a company within the meaning of the Companies Act, 1956 (1 of 1956), if more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely:—

(a) Government of a foreign country or territory,

(b) citizens of a foreign country or territory,

(c) corporations incorporated in a foreign country or territory,

(d) trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory,

(vii) a trade union in any foreign country or territory, whether or not registered in such foreign country or territory,

(viii) a foreign trust by whatever name called, or a foreign foundation which is either in the nature of trust or is mainly financed by a foreign country or territory,

(ix) a society, club or other association of individuals formed or registered outside India,

(x) a citizen of a foreign country,

but does not include any foreign institution which has been permitted by the Central Government, by notification in the Official Gazette, to carry on its activities in India;

(f) "Legislature" means—

(i) either House of Parliament,

(ii) the Legislative Assembly of a State, or in the case of a State having a Legislative Council, either House of the Legislature of that State,

(iii) Legislative Assembly of a Union territory constituted under the Government of Union Territories Act, 1963 (20 of 1963),

(iv) the Metropolitan Council of Delhi constituted under section 3 of the Delhi Administration Act, 1966 (19 of 1966),

(v) Municipal Corporations in metropolitan areas as defined in the Code of Criminal Procedure, 1973 (2 of 1974),

(vi) District Councils and Regional Councils in the States of Assam and Meghalaya and in the Union territory of Mizoram as provided in the Sixth Schedule to the Constitution, or

(vii) any other elective body as may be notified by the Central Government, as the case may be;

[1][(g) "political party" means—

(i) an association or body of individual citizens of India—

(1) which is, or is deemed to be registered with the Election Commission of India as a political party under the Election Symbols (Reservation and Allotment) Order, 1968, as in force for the time being; or

(2) which has set up candidates for election to any Legislature, but is not so registered or deemed to be registered under the Election Symbols (Reservation and Allotment) Order, 1968;

(ii) a political party mentioned in column 1 of Table I to the notification of the Election Commission of India No. 56/J&K/84, dated the 27th September, 1984, as in force for the time being;]

(h) "prescribed" means prescribed by rules made under this Act;

(i) "registered newspaper" means a newspaper registered under the Press and Registration of Books Act, 1867 (25 of 1867);

(j) "subsidiary" and "associate" have the meanings, respectively, assigned to them in the Companies Act, 1956 (1 of 1956);

(k) "trade union" means a trade union registered under the Trade Unions Act, 1926 (16 of 1926).

Explanation.—For the purposes of this Act, a corporation incorporated in a foreign country or territory shall be deemed to be a multi-national corporation if such corporation—

(a) has a subsidiary or a branch or a place of business in two or more countries or territories; or

(b) carries on business, or otherwise operates, in two or more countries or territories.

(2) Words and expressions used herein and not defined but defined in the Foreign Exchange Regulation Act, 1973 (46 of 1973), have the meanings respectively assigned to them in that Act.

(3) Words and expressions used herein and not defined in this Act or in the Foreign Exchange Regulation Act, 1973 (46 of 1973), but defined in the Representation of the People Act, 1950 (43 of 1950), or the Representation of the People Act, 1951 (43 of 1951), have the meanings respectively assigned to them in such Act.

3. Application of other laws not barred.—The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

CHAPTER II

REGULATION OF FOREIGN CONTRIBUTION AND FOREIGN HOSPITALITY

4. Candidate for election, etc., not to accept foreign contribution.—(1) No foreign contribution shall be accepted by any—

(a) candidate for election,

(b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper,

(c) [2][Judge, Government servant] or employee of any corporation,

1. Subs. by Act 1 of 1985, sec. 2, for clause (g) (w.e.f. 20-10-1984).
2. Subs. by Act 1 of 1985, sec. 3, for "Government servant" (w.e.f. 20-10-1984).

(d) member of any Legislature,

(e) political party or office-bearer thereof.

Explanation.—In clause (c) and in section 9, "corporation" means a corporation owned or controlled by Government and includes a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).

(2) (a) No person, resident in India, and no citizen of India resident outside India, shall accept any foreign contribution, or acquire or agree to acquire any currency from a foreign source, on behalf of any political party, or any person referred to in sub-section (1), or both.

(b) No person, resident in India, shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to any person if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to any political party or any person referred to in sub-section (1), or both.

(c) No citizen of India resident outside India shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to—

(i) any political party or any person referred to in sub-section (1), or both, or

(ii) any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a political party or to any person referred to in sub-section (1), or both.

(3) No person receiving any currency, whether Indian or foreign, from a foreign source on behalf of any association, referred to in sub-section (1) of section 6, shall deliver such currency—

(i) to any association or organisation other than the association for which it was received, or

(ii) to any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to an association other than the association for which such currency was received.

COMMENTS

No candidate for election, correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper, Judge, Government servants or employee of any Corporation owned or controlled by Government including Government company, member of any Legislature, political party or office-bearer thereof is permitted to accept foreign contribution.

5. Organisation of a political nature not to accept foreign contribution except with the prior permission of the Central Government.—(1) No organisation of a political nature, not being a political party, shall, accept any foreign contribution except with the prior permission of the Central Government.

Explanation.—For the purposes of this section, "organisation of a political nature, not being a political party" means such organisation as the Central Government may, having regard to the activities of the organiation or the ideology propagated by the organisation or the programme of the organisation or the association of the organisation with the activities of any political party, by an order published in the Official Gazette, specify in this behalf.

(2) (a) Except with the prior permission of the Central Government, no person, resident in India, and no citizen of India, resident outside India, shall accept any foreign contribution, or acquire or agree to acquire any foreign currency, on behalf of an organisation referred to in sub-section (1).

(b) Except with the prior permission of the Central Government, no person, resident in India, shall deliver any foreign currency to any person if he knows or has reasonable

cause to believe that such other person intends, or is likely, to deliver such currency to an organisation referred to in sub-section (1),

(c) Except with the prior approval of the Central Government, no citizen of India, resident outside India, shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to—

(i) any organisation referred to in sub-section (1), or

(ii) any person, if he knows or has reasonable cause to believe that, such person intends, or is likely, to deliver such currency to an organisation referred to in sub-section (1).

COMMENTS

No organisation of a political nature (not being a political party) is permitted to accept foreign contribution without the prior permission of the Central Government.

6. Certain associations and persons receiving foreign contribution to give intimation to the Central Government.—[1][(1) No association [other than an organisation referred to in sub-section (1) of section 5] having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution unless such association,—

(a) registers itself with the Central Government in accordance with the rules made under this Act; and

(b) agrees to receive such foreign contributions only through such one of the branches of a bank as it may specify in its application for such registration,

and every association so registered shall give, within such time and in such manner as may be prescribed, an intimation to the Central Government as to the amount of each foreign contribution received by it, the source from which and the manner in which such foreign contribution was received and the purposes for which and the manner in which such foreign contribution was utilised by it:

Provided that where such association obtains any foreign contribution through any branch other than the branch of the bank through which it has agreed to receive foreign contribution or fails to give such intimation within the prescribed time or in the prescribed manner, or gives any intimation which is false, the Central Government may, by notification in the Official Gazette, direct that such association shall not, after the date of issue of such notification, accept any foreign contribution without the prior permission of the Central Government.

(1A) Every association referred to in sub-section (1) may, if it is not registered with the Central Government under that sub-section, accept any foreign contribution only after obtaining the prior permission of the Central Government and shall also give, within such time and in such manner as may be prescribed, an intimation to the Central Government as to the amount of foreign contribution received by it, the source from which and the manner in which such foreign contribution was received and the purposes for which and the manner in which such foreign contribution was utilised by it.]

(2) Every candidate for election, who had received any foreign contribution, at any time within one hundred and eighty days immediately preceding the date on which he is duly nominated as such candidate, shall give, within such time and in such manner as may be prescribed, an intimation to the Central Government as to the amount of foreign contribution received by him, the source from which and the manner in which such foreign contribution was received and the purposes for which, and the manner in which, such foreign contribution was utilised by him.

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1. Subs. by Act 1 of 1985, sec. 4, for sub-section (1) (w.r.e.f. 1-1-1985).

COMMENTS

No association having a definite cultural, economic, educational, religious or social programme is permitted to accept foreign contribution unless such association registers itself with the Central Government and agrees to receive such foreign contribution only through one of the branches of a bank specified in the application for registration. But an association which is not registered with the Central Government can accept foreign contribution only after obtaining the prior permission of the Central Government.

7. Recipients of scholarships, etc., to give intimation to the Central Government.—(1) Every citizen of India receiving any scholarship, stipend or any payment of a like nature from any foreign source shall give, within such time and in such manner as may be prescribed, an intimation to the Central Government as to the amount of the scholarship, stipend or other payment received by him and the foreign source from which, and the purpose for which, such scholarship, stipend or other payment has been, or is being, received by him.

(2) Where any recurring payments are being received by any citizen of India from any foreign source by way of scholarship, stipend or other payment, it shall be sufficient if the intimation referred to in sub-section (1) includes a precise information as to the intervals at which, and the purpose for which, such recurring payments will be received by such citizen of India.

(3) It shall not be necessary to give such intimation as is referred to in sub-section (1) or sub-section (2) in relation to scholarships, stipends or payments of a like nature, if the annual value of such scholarships, stipends or other payments does not exceed such limits as the Central Government may, by rules made under this Act, specify in this behalf.

COMMENTS

If any citizen of India receives any scholarship, stipend or any payment of a like nature from any foreign source he has to give an intimation to the Central Government as to the amount and the foreign source.

8. Persons to whom section 4 shall not apply.—Nothing contained in section 4 shall apply to the acceptance, by any person specified in that section, of any foreign contribution, where such contribution is accepted by him, subject to the provisions of section 10,—

(a) by way of salary, wages or other remuneration due to him or to any group of persons working under him, from any foreign source or by way of payment in the ordinary course of business transacted in India by such foreign source; or

(b) by way of payment, in the course of international trade or commerce, or in the ordinary course of business transacted by him outside India; or

(c) as an agent of a foreign source in relation to any transaction made by such foreign source with Government; or

(d) by way of a gift or presentation made to him as a member of any Indian delegation, provided that such gift or present was accepted in accordance with the regulations made by the Central Government with regard to the acceptance or retention of such gift or presentation; or

(e) from his relative when such foreign contribution has been received with the previous permission of the Central Government:

Provided that no such permission shall be required if the amount of foreign contribution received by him from his relative does not exceed, in value, eight thousand rupees per annum and an intimation is given by him to the Central Government as to the amount received, the source from which and the manner in which it was received and the purpose for which and the manner in which it was utilised by him;

(f) by way of remittance received, in the ordinary course of business, through any official channel, post office, or any authorised dealer in foreign exchange under the Foreign Exchange Regulation Act, 1973 (46 of 1973).

Explanation.—In this Act, the expression "relative" has the meaning assigned to it in the Companies Act, 1956 (1 of 1956).

9. Restrictions on acceptance of foreign hospitality.—No member of a Legislature, office-bearer of a political party, [1][Judge, Government servant] or employee of any corporation shall, while visiting any country or territory outside India, accept, except with the prior permission of the Central Government, any foreign hospitality:

Provided that it shall not be necessary to obtain any such permission for an emergent medical aid needed on account of sudden illness contracted during a visit outside India, but, where such foreign hospitality has been received, the person receiving such hospitality shall give, within one month from the date of receipt of such hospitality an intimation to the Central Government as to the receipt of such hospitality and the source from which, and the manner in which, such hospitality was received by him.

10. Power of Central Government to prohibit receipt of foreign contribution, etc., in certain cases.—The Central Government may—

(a) prohibit any association, not specified in section 4, or any person, from accepting any foreign contribution;

(b) [2][without prejudice to the provisions of sub-section (1) of section 6, require any association specified in that sub-section], to obtain prior permission of the Central Government before accepting any foreign contribution;

(c) require any person or class of persons or any association, not being an association specified in section 6, to furnish intimation within such time and in such manner as may be prescribed as to the amount of any foreign contribution received by such person or class of persons or association, as the case may be, and the source from which and the manner in which such contribution was received and the purpose for which and the manner in which such foreign contribution was utilised;

(d) require any person or class of persons, not specified in section 9, to obtain prior permission of the Central Government before accepting any foreign hospitality;

(e) require any person or class of persons, not specified in section 9, to furnish intimation, within such time and in such manner as may be prescribed, as to the receipt of any foreign hospitality, the source from which and the manner in which such hospitality was received:

Provided that no such prohibition or requirement shall be made unless the Central Government is satisfied that the acceptance of foreign contribution by such association or person or class of persons, as the case may be, the acceptance of foreign hospitality by such person, is likely to affect prejudicially—

(i) the sovereignty and integrity of India; or

(ii) the public interest; or

(iii) freedom or fairness of election to any Legislature; or

(iv) friendly relations with any foreign State; or

(v) harmony between religious, racial, linguistic or regional groups, castes or communities.

1. Subs. by Act 1 of 1985, sec. 5, for "Government servant" (w.e.f. 20-10-1984).
2. Subs. by Act 1 of 1985, sec. 6, for "require any association, specified in section 6" (w.e.f. 1-1-1985).

11. Application to be made in prescribed form for obtaining prior permission to accept foreign contribution or hospitality.—(1) Every individual, association, organisation or other person, who is required by or under this Act to obtain the prior permission of the Central Government to accept any foreign contribution or foreign hospitality, shall, before the acceptance of any such contribution or hospitality make an application for such permission to the Central Government if such form and in such manner as may be prescribed.

(2) If an application referred to in sub-section (1) is not disposed of within ninety days from the date of receipt of such application, the permission prayed for in such application shall, on the expiry of the said period of ninety days, be deemed to have been granted by the Central Government:

Provided that, where, in relation to an application, the Central Government has informed the applicant the special difficulties by reason of which his application cannot be disposed of within the said period of ninety days, such application shall not, until the expiry of a further period of thirty days, be deemed to have been granted by the Central Government.

COMMENTS

Every individual, association or organisation has to make an application to the Central Government for permission to accept foreign contribution or foreign hospitality in the prescribed form and manner.

CHAPTER III

MISCELLANEOUS

12. Power to prohibit payment of currency received in contravention of the Act.—Where the Central Government is satisfied, after making such inquiry as it may deem fit, that any person has in his custody or control any article or currency, whether Indian or foreign, which has been accepted by such person in contravention of any of the provisions of this Act, it may, by order in writing, prohibit such person from paying, delivering, transferring or otherwise dealing with, in any manner whatsoever, such article or currency save in accordance with the written orders of the Central Government and a copy of such order shall be served upon the person so prohibited in the prescribed manner, and there upon the provisions of sub-sections (2), (3), (4) and (5) of section 7 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) shall, so far as may be, apply to, or in relation to, such article or currency and references in the said sub-sections to moneys, securities or credits shall be construed as references to such article or currency.

13. Recipients of foreign contribution to maintain accounts, etc.—Every association, referred to in section 6, shall maintain, in such form and in such manner as may be prescribed,—

(a) an account of any foreign contribution received by it, and

(b) a record as to the manner in which such contribution has been utilised by it.

COMMENTS

If any association having a definite cultural, economic, educational, religious or social programme, accepts any foreign contribution it has to maintain an account of such contributions and has also to maintain a record as to the manner in which such contribution has been utilised by it.

14. Inspection of accounts or records.—If the Central Government has, for any reason, to be recorded in writing, any ground to suspect that any provision of this Act has been, or is being, contravened by—

(a) any political party, or

(b) any person, or

(c) any organisation, or

(d) any association,

it may, by general or special order, authorise such gazetted officer, holding a [1][Group A post], as it may think fit (hereinafter referred to as the authorised officer), to inspect any account or record maintained by such political party, person, organisation or association, as the case may be, and thereupon every such authorised officer shall have the right to enter in or upon any premises at any reasonable hour, before sunset and after sunrise, for the purpose of inspecting the said account or record:

Provided that no gazetted officer shall be authorised to inspect the account or record maintained by a political party, unless he has been holding a [1][Group A post] in connection with the affairs of the Union, or a State, for not less than ten years.

15. Seizure of accounts or records.—If, after inspection of an account or record referred to in section 14, the authorised officer has any reasonable cause to believe that any provision of this Act or of any other law relating to foreign exchange has been, or is being, contravened, he may seize such account or record and produce the same before the court in which any proceeding is brought for such contravention:

Provided that the authorised officer shall return such account or record to the person from whom it was seized if no proceeding is brought within six months from the date of such seizure for the contravention disclosed by such account or record.

[2][**15A. Audit of accounts.**—Where any organisation or association fails to furnish any returns under this Act within the time specified therefor or the returns so furnished are not in accordance with law or if, after inspection of such returns, the Central Government has any reasonable cause to believe that any provision of this Act has been, or is being, contravened, that Government may, by general or special order, authorise such gazetted officer, holding a Group A post, as it may think fit, to audit any books of account kept or maintained by such organisation or association, as the case may be, and thereupon every such officer shall have the right to enter in or upon any premises at any reasonable hour, before sunset and after sunrise, for the purpose of auditing the said books of account:

Provided that any information obtained from such audit shall be kept confidential and shall not be disclosed except for the purposes of this Act.]

16. Seizure of article or currency received in contravention of the Act.—If any gazetted officer, authorised in this behalf by the Central Government, by general or special order, has any reason to believe that any person has in his possession or control any article exceeding rupees one thousand in value, or currency, whether Indian or foreign, in relation to which any provision of this Act has been, or is being, contravened, he may seize such article or currency.

COMMENTS

If there is any reason to believe that any person has in his possession or control any article exceeding rupees one thousand in value, or currency, whether Indian or foreign, in relation to which any provision of the Act has been or is being contravened, any authorized gazetted officer can seize such article or currency.

17. Seizure to be made in accordance with the Code of Criminal Procedure, 1973.—Every seizure made under this Act shall be made in accordance with the provision of section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

18. Confiscation of article or currency obtained in contravention of the Act.—Any article or currency which is seized under section 16 shall be liable to confiscation if such

1. Subs. by Act 1 of 1985, sec. 7, for "Class I post" (w.r.e.f. 20-10-1984).
2. Ins. by Act 1 of 1985, sec. 8 (w.r.e.f. 20-10-1984).

article or currency has been adjudged under section 19 to have been received or obtained in contravention of this Act.

19. Adjudication of confiscation.—Any confiscation referred to in section 18 may be adjudged—

(a) without limit, by the Court of Session within the local limits of whose jurisdiction the seizure was made; and

(b) subject to such limits as may be prescribed, by such officer, not below the rank of an Assistant Session Judge, as the Central Government may, by notification in the Official Gazette, specify in this behalf.

20. Opportunity to be given before adjudication of confiscation.—No order of adjudication of confiscation shall be made unless a reasonable opportunity of making a representation against such confiscation has been given to the person from whom any article or currency has been seized.

21. Appeal.—(1) Any person aggrieved by any order made under section 19 may prefer an appeal,—

(a) where the order has been made by the Court of Session, to the High Court to which such Court is subordinate; or

(b) where the order has been made by any officer specified under clause (b) of section 19, to the Court of Session within the local limits of whose jurisdiction such order of adjudication of confiscation was made,

within one month from the date of communication to such person of the order:

Provided that the appellate court may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of one month, allow such appeal to be preferred within a further period of one month, but not thereafter.

(2) Any organisation referred to in section 5, or any person or association referred to in section 9 or section 10, aggrieved by an order made in pursuance of the *Explanation* to sub-section (1) of section 5 or by an order of the Central Government refusing to give permission, or by any order made by the Central Government, under section 5 or section 9 or section 10, as the case may be, may within sixty days from the date of such order prefer an appeal against such order to the High Court within the local limits of whose jurisdiction the appellant ordinarily resides or carries on business or personally works for gain, or, where the appellant is an organisation or association, the principal office of such organisation or association is located.

(3) Every appeal preferred under this section shall be deemed to be an appeal from an original decree and the provisions of Order XLI of the First Schedule to the Code of Civil Procedure, 1908(5 of 1908), shall, as far as may be, apply thereto as they apply to an appeal from an original decree.

22. Penalty for article or currency obtained in contravention of section 12.—If any person, on whom any prohibitory order has been served under section 12, pays, delivers, transfers or otherwise deals with, in any manner whatsoever, any article or currency, whether Indian or foreign, in contravention of such prohibitory order, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both; and notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the court trying such contravention may also impose on the person convicted an additional fine equivalent to the market value of the article or the amount of the currency in respect of which the prohibitory order has been contravened by him or such part thereof as the court may deem fit.

COMMENTS

If any person, on whom any prohibitory order has been served, pays, delivers, transfers or otherwise deals with any article or currency in contravention of such prohibitory order, he is to

be punished with imprisonment upto three years or with fine or with both. The court trying such contravention can also impose on the person convicted an additional fine equivalent to the market value of the article or the amount of the currency in respect of which the prohibitory order has been contravened by him.

23. Punishment for the contravention of any provision of the Act.—(1) Whoever accepts, or assists any person, political party or organisation in accepting, any foreign contribution or any currency from a foreign source, in contravention of any provision of this Act or any rule made thereunder, shall be punished with imprisonment for a term which may extend to five years, or with fine, or with both.

(2) Whoever accepts any foreign hospitality in contravention of any provision of this Act or any rule made thereunder shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

24. Power to impose additional fine where article or currency is not available for confiscation.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Court trying a person, who, in relation to any article or currency, whether Indian or foreign, does or omits to do any act which act or omission would render such article or currency liable to confiscation under this Act, may, in the event of the conviction of such person for the act or omission aforesaid, impose on such person a fine not exceeding five times the value of the article or currency or one thousand rupees, whichever is more, if such article or currency is not available for confiscation, and the fine so imposed shall be in addition to any other fine which may be imposed on such person under this Act.

25. Penalty for offences where no separate punishment has been provided.—Whoever fails to comply with any provision of this Act for which no separate penalty has been provided in this Act shall be punished with imprisonment of a term which may extend to one year, or with fine not exceeding one thousand rupees, or with both.

[1][**25A. Prohibition of acceptance of foreign contribution.**—Notwithstanding anything contained in this Act, whoever, having been convicted of any offence under sub-section (1) of section 23 or section 25, in-so far as such offence relates to the acceptance or utilisation of foreign contribution, is again convicted of such offence shall not accept any foreign contribution for a period of three years from the date of the subsequent conviction.]

26. Offences by companies.—(1) Where an offence under this Act or any rule made there under has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act or any rule made thereunder has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm, society, trade union or other association of individuals; and

1. Ins. by Act 1 of 1985, sec. 9 (w.r.e.f. 20-10-1984).

(b) "director", in relation to a firm, society, trade union or other association of individuals, means a partner in the firm or a member of the governing body of such society, trade union or other association of individuals.

27. Bar to the prosecution of offences under the Act.—No court shall take cognizance of any offence under this Act, except with the previous sanction of the Central Government or any officer authorised by that Government in this behalf.

COMMENTS

No court can take cognizance of any offence committed under this Act without the previous sanction of the Central Government.

28. Investigation into cases under the Act.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act may also be investigated into by such authority as the Central Government may specify in this behalf and the authority so specified shall have all the powers which an officer-in-charge of a police station has while making an investigation into a cognizable offence.

29. Protection of action taken in good faith.—No suit or other legal proceedings shall lie against the Central Government in respect of any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of the provisions of this Act or, any rule or order made thereunder.

30. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the time within which, and the manner in which, intimation is to be given by an association referred to in section 6, with regard to the foreign contributions received by it;

(b) the limits up to which receipt of scholarships, stipends or payments of a like nature need not be intimated to the Central Government;

(c) the time within which, and the manner in which, intimation is to be given by persons receiving any scholarship, stipend or any payment of a like nature from a foreign source;

(d) the time within which, and the manner in which a candidate for election should give intimation as to the amount of foreign contribution received by him at any time within one hundred and eighty days from the date when he became such candidate;

(e) the form and manner in which an application shall be made for obtaining prior permission of the Central Government to receive foreign contribution or foreign hospitality;

(f) the manner of service of the prohibitory order made under section 12;

(g) the form and manner in which account or record referred to in section 13 shall be maintained;

(h) the limits up to which an officer, not below the rank of an Assistant Sessions Judge, may make adjudication of confiscation;

(i) any other matter which is required to be, or may be prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule

or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

31. Power to exempt.—If the Central Government is of opinion that it is necessary or expedient in the interests of the general public so to do, it may, by order and subject to such conditions as may be specified in the order, exempt any association (not being a political party), organisation or any individual (not being a candidate for election) from the operation of all or any of the provisions of this Act and may, as often as may be necessary, revoke or modify such order.

32. Act not to apply to Government transactions.—Nothing contained in this Act shall apply to any transaction between the Government of India and the Government of any foreign country or territory.



33

THE FOREIGN CONTRIBUTION (REGULATION) RULES, 1976

In exercise of the powers conferred by section 30 of the Foreign Contribution (Regulation) Act, 1976 (49 of 1976), the Central Government hereby makes the following rules, namely:—

1. Short title and commencement.—(1) These rules may be called the Foreign Contribution (Regulation) Rules, 1976.

(2) They shall come into force on the 5th day of August, 1976.

2. Definitions.—In these Rules unless the context otherwise requires,—

(a) "Act" means the Foreign Contribution (Regulation) Act, 1976;

(b) "Form" means a form appended to these rules;

(c) "section" means a section of the Act;

[1][(d) "year" means the accounting year commencing from 1st day of April and ending on 31st day of March of the next calendar year.]

3. Application for obtaining prior permission to receive foreign contribution or foreign hospitality.—An application for obtaining prior permission of the Central Government to—

(a) receive foreign contribution under sub-section (1) of section 5, or clause (a) of sub-section (2) of that section, shall be made in Form FC1;

[2][(aa) receive foreign contribution under proviso to sub-section (1) of section 6, or under sub-section (1A) of that section or clause (b) of section 10, shall be made in Form FC 1A;]

(b) accept foreign hospitality under section 9 [3][or clause (d) of section 10], shall be made in Form FC 2.

[3][**3A. Application for registration.**—An application for registration of an association referred to in sub-section (1) of section 6 for acceptance of foreign contribution shall be made in Form FC 8].

4. Intimation regarding receipt of foreign contribution or scholarship or stipend or any payment of a like nature of foreign hospitality.—(1) An intimation as to the receipt of—

[4][(a) foreign contribution by an association referred to in sub-sections (1) and (1A) of section 6 shall be given for every year beginning on the 1st day of April, in Form FC 3 in duplicate, within [5][four months] of the closure of the year:

1. Ins. by G.S.R. 179(E), dated 25th March, 1991 (w.e.f. 1-4-1991).
2. Ins. by G.S.R. 755(E), dated 5th November, 1984 (w.e.f. 5-11-1984).
3. Ins. by S.O. 860(E), dated 29th December, 1977 (w.e.f. 29-12-1977).
4. Subs. by G.S.R. 179(E), dated 25th March, 1991 (w.e.f. 1-4-1991).
5. Subs. by G.S.R. 592(E), dated 27th December, 1996 (w.e.f. 27-12-1996).

[1][Provided that a NIL report shall also be furnished. The intimation to be furnished for the year beginning on the 1st day of April 1991 shall also include the receipt and utilisation of foreign contribution during the period commencing from 1st January, 1991 and ending on 31st March, 1991;]

(b) foreign contribution by a candidate for election, referred to in sub-section (2) of section 6 shall be given in Form FC 4, within fifteen days from the date on which he is duly nominated as a candidate for election;

(c) any scholarship, stipend or any payment of a like nature, from any foreign source in relation to which an intimation is required to be given under sub-section (1) of section 7, shall be given in Form FC 5, within thirty days of receipt of such scholarship, stipend or other payment of a like nature:

Provided that where the person receiving the scholarship, stipend or any payment of a like nature is residing outside India, the intimation shall be given within sixty days from the date of receipt of such scholarship, stipend or other payment of a like nature;

(d) foreign hospitality, referred to in the proviso to section 9, shall be given on plain paper within thirty days from the date of receipt of such hospitality specifying the particulars as to the receipt of such hospitality and the source from which and the manner in which such hospitality was received.

5. Intimation of receipt of scholarship, stipend or any payment of a like nature, when not necessary.—It shall not be necessary for a citizen of India to give any intimation under section 7 regarding receipt of scholarship, stipend or any payment of a like nature from any foreign source, if the value of such scholarship, stipend or other payment does not exceed, during an academic year, rupees thirty-six thousand.

Explanation.—In calculating the value,—

(a) the amount received by the citizen for the purchase of books, clothing and equipment and for sight-seeing in a foreign country or territory shall be taken into account; but

(b) the amount spent in travel by air in economy class from India to a foreign country or territory and back to India from such foreign country or territory, and the amount spent by the foreign source in respect of such citizen towards tuition and other fees, shall not be taken into account.

6. Authority to whom an application or intimation to be sent.—Any application or intimation referred to in rule 3, [1][rule 3A] or rule 4, as the case may be, shall be made or given to the Secretary to the Government of India in the Ministry of Home Affairs, New Delhi. Such application or intimation shall be sent by registered post.

7. Manner of service of prohibitory order or any other order or direction.—A prohibitory order under section 12 or any other order or direction made or issued under the Act, shall be served on the person concerned in the following manner, that is to say,—

(a) by delivering or tendering it to that person or to his duly authorised agent; or

(b) by sending it to him by registered post acknowledgement due to the address of his last known place of residence or the place where he carries on, or is known to have last carried on, business or the place where he personally works for gain or is known to have last worked for gain, and in case the person is an organisation or an association, to the last known address of the office of such organisation or association;

(c) if it cannot be served in any of the manners aforesaid, by affixing it on the outer door or some other conspicuous part of the premises in which that person resides, or carries on, or is known to have last carried on, business, or personally

1. Ins. by G.S.R. 755(E), dated 5th November, 1984 (w.e.f. 5-11-1984).

works for gain, or is known to have last worked personally for gain, and in case the person is an organisation or an association, on the outer door or some other conspicuous part of the premises in which the officer of the organisation or association is located, or is known to have been last located, and the written report whereof should be witnessed by at least two persons.

8. Maintenance of accounts.—(1) A separate set of accounts and records shall be maintained, exclusively for foreign contribution received and utilised,—

(a) in Form FC 6, where the foreign contribution relates only to articles as referred to in item (i) of sub-clause (c) of clause (1) of section 2;

(b) in the cash book and ledger account on double entry basis, where the foreign contribution relates to currency received and utilised, and a separate bank account shall be maintained in respect of such contribution;

(c) in Form FC 7, where the foreign contribution relates to foreign securities.

[1][(2) Every account specified in sub-rule (1) shall be maintained on an yearly basis, commencing on the 1st day of [2][April] each year and every such yearly account, duly certified by a chartered accountant [2][in Form FC 3 along with a balance sheet and statement of receipts and payments], shall be furnished, in duplicate, to the Secretary to the Government of India, in the Ministry of Home Affairs, New Delhi, within [3][four months] the closure of the year.]

Explanation.—In this rule, "Chartered Accountant" has the meaning assigned to it in the Chartered Accountants Act, 1949 (38 of 1949).

9. Limits up to which an officer, not below the rank of an Assistant Sessions Judge may make adjudication of confiscation.—An officer referred to in clause (b) of section 19 may adjudge confiscation in relation to any article or currency seized under section 16, if the value of such article or the amount of such currency exceeds one thousand rupees but does not exceed fifty thousand rupees.

FORM FC 1

[*See* rule 3(a)]

APPLICATION FOR SEEKING PRIOR PERMISSION OF THE CENTRAL GOVERNMENT FOR ACCEPTING FOREIGN CONTRIBUTION BY OR ON BEHALF OF AN ORGANISATION OF POLITICAL NATURE NOT BEING A POLITICAL PARTY

[Section 5(1) and 5(2)(a) of the Foreign Contribution (Regulation) Act, 1976]

1.(a) Particulars of the Organisation

(Full name in BLOCK LETTERS and address)

(b) Address of the Principal Office/Head Office of the Organisation

2. Full particulars of the person applying on behalf of the Organisation

(a) Name in full (in BLOCK LETTERS)

(b) Name of father

(c) Occupation

(d) Residential address

(e) If an office-bearer, the office held in the Organisation.

3. Reference of the order published by the Central Government in the Official Gazette specifying the Organisation as an "Organisation of Political Nature, not being a political party".

4. Nature and full details of contribution including value, to be received

1. Subs. by S.O. 860(E), dated 29th December, 1977 (w.e.f. 29-12-1977).
2. Subs. by G.S.R. 179(E), dated 25th March, 1991 (w.e.f. 1-4-1991).
3. Subs. by G.S.R. 592(E), dated 27th December, 1996 (w.e.f. 27-12-1996).

5. The mode/channel of receipt
6. Purpose for which foreign contribution is proposed is to be received
7. Particulars of the foreign source from which contribution is to be received:
   (a) if an individual, his personal particulars including name, present address, permanent address, nationality, profession
   (b) if an Organisation/Institution/Association/Trust/Foundation/Trade Union, etc., full particulars thereof including—
      (i) full name and complete address
      (ii) address of Head Office/Principal Office
      (iii) aims and objects
      (iv) particulars of important office-bearers
8. Nature of connection/dealings with the foreign source.
9. Any other information of significance which the applicant may like to furnish

DECLARATION

I hereby declare that the above particulars furnished by me are true and correct.

Place:.......................... Signature of the Applicant

Date:...........................

Note.—In the case of application by an Organisation, it should be signed by the chief functionary.

[1][FORM FC 1A

[*See* rule 3(aa)]

FORM OF APPLICATION FOR SEEKING PRIOR PERMISSION FROM THE CENTRAL GOVERNMENT UNDER THE FOREIGN CONTRIBUTION (REGULATION) ACT, 1976 (HEREINAFTER REFERRED TO AS THE ACT) FOR THE ACCEPTANCE OF FOREIGN CONTRIBUTION BY AN ASSOCIATION HAVING A DEFINITE CULTURAL, ECONOMIC, EDUCATIONAL, RELIGIOUS OR SOCIAL PROGRAMME

No.................... Date..................

To

The Secretary to the Government of India,

Ministry of Home Affairs, Lok Nayak Bhavan, Khan Market,

New Delhi-110003.

Subject: Application for seeking the prior permission of the Central Government under the Foreign Contribution (Regulation) Act, 1976 for acceptance of foreign contribution.

Sir,

I,........................, on behalf of the Association named hereafter, apply for seeking prior permission of the Central Government for the acceptance of foreign contribution under proviso to sub-section (1) of section 6 or under sub-section (1A) of that section or clause (b) of section 10 of the Act.

1. (i) Name of the Association and its complete postal address.

   Name

   Address

   Town/City

   State

   District

   Pin Code

1. Subs. by G.S.R. 8(E), dated 4th January, 1999 (w.e.f. 4-1-1999).

(ii) If the Association is a registered trust or Society please indicate its—

(a) registration number

(b) place of registration

(c) date of registration

(certified copy of the registration certificate to be attached)

(iii) Nature of Association

(a) religious, (b) cultural, (c) economic, (d) educational, (e) social.

Note.— If a religious Association, then state whether—

(a) Hindu, (b) Sikh, (c) Muslim, (d) Christian, (e) Buddhist, (f) Others.

(iv) Please indicate the main aim (s) and object(s) of the Association (enclose copy of the Memorandum of Association and/or the Articles of Association, if applicable).

(v) Please furnish the names and address of the members of the Executive Committee/ Governing Council *etc.* of the Association, including the Chief Functionary, in the following manner:—

Sl. No.	Name	Name of Father/ Husband	Nationality	Occupation	Office held in the Association, if any	Relation with other office-bearers, if any	Address
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

2. Please indicate whether any member of the Executive Committee/Governing Council etc. of the Association, including the Chief Functionary has, in the discharge of his/her official functions—

(a) been convicted by any court of law,

(b) a prosecution for any offence pending against him/her,

(c) been found guilty of diversion or misutilisation of funds of the Association or any other association in the past.

3. Please indicate whether the applicant Association—

(a) is a branch/unit/associate of foreign based organisation or another association already registered under the Act. If so, name and address of the parent organisation should be furnished;

(b) has been directed by the Central Government in terms of the proviso to sub-section (1) of section 6 of the Act to seek prior permission. If so, the number and date of the relevant order should be furnished.

(c) has been directed by the Central Government in terms of section 10 of the Act to seek prior permission. If so, the number and date of the relevant order should be furnished.

4. Please indicate—

(i) whether the Association ever applied for registration under the Act in the past, if so,—

(a) the date of submission of application for registration,

(b) the number and date of last reference, if any, received from the Ministry,

(c) whether registration was refused,

(d) whether the application for registration is still pending.

(ii) whether the Association has close links with another association, or its unit or branch which has been—

(a) refused registration under the Act,

(b) prohibited from accepting foreign contribution.

5. Please indicate—

(i) Whether the Association was (a) granted prior permission to receive foreign contribution under the Act in the past. If so, the number and date of the letter granting prior permission should be furnished;

(b) whether the account of the receipt and utilisation of the foreign contribution received above was sent to the Central Government in the prescribed form. If so, the date of submission of the accounts should be furnished;

(c) if the prior permission was granted in the current year, details of the foreign contribution received and utilised, purpose-wise, showing the unspent balance should be annexed.

(ii) whether the Association has received foreign contribution without the prior permission of the Central Government, in the past. If so,—

(a) full particulars of the foreign contribution received, address of the branch of the bank and account number in which deposited should be furnished;

(b) whether the said violation has been condoned by the Central Government;

(c) whether the Association has been prohibited from accepting foreign contribution under the Act.

6. Please indicate whether the Association is owner/printer/publisher, editor of a publication which is a "registered newspaper" under the Press and Registration of Books Act, 1867.

7. Please furnish—

(i) Details of the activities of the Association during the past three-years;

(ii) copies of the audited statement of accounts of the association for the past three years.

8. (i) Please indicate—

(a) the nature and value of foreign contribution to be received (a copy of the latest commitment letter from the donor should be furnished);

(b) the purpose for which the foreign contribution is proposed to be received and utilised indicating also the geographical area (s) to be covered.

(ii) a copy of the proposal/project which has been approved by the foreign source for funding, including projected outlays/budget breakup, should be enclosed.

(iii) a copy of the proposal/project which has been approved for funding out of the foreign contribution should be enclosed. (This column applies only to subsequent recipients).

9. Please indicate—

(i) the name of the bank and address of the branch through which the foreign contribution is proposed to be received;

(ii) the account number in the said branch of the bank.

10. Please indicate the particulars of the foreign source or the sources* from which the foreign contribution* is proposed to be received—

(a) if an individual, his personal particulars including name, present address, permanent address, nationality, profession;

(b) if an organisation/institution/association/trust/trade union, etc., full particulars thereof, including—

(i) full name and complete address,

(ii) address of the Head Office/Principal Office,

(iii) particulars of Chief Functionary and important office bearers;

(c) Please indicate whether the foreign source is a Government of a foreign country or agency thereof.

[1][10A. whether a recommendation certificate from the competent authority is attached (Yes/No)]*

11. Any other information which the Association may like to furnish.

Yours faithfully,

Signature of the Applicant

---

1. Ins. by G.S.R. 63(E), dated 24th January, 2000 (w.e.f. 25-1-2000).

[Name of the Chief Functionary or
authorised office bearer
(with seal of the Association)]

DECLARATION

I hereby declare that the above particulars furnished by me are true and correct.

Signature of the Applicant

[Name of the Chief Functionary or
authorised office bearer
(with seal of the Association)]

Place............................

Date.............................

*If the foreign contribution, whether currency or article is to be received from any person or association who has received the same as first, second or subsequent recipient, particulars of such person or association should be given against column 10 above.

Notes.—

1. An incomplete application *i.e.*, without necessary documents/details/explanation is likely to be rejected summarily
2. In case the space against any column is insufficient, separate annexure should be attached.
3. Please use CAPITAL LETTERS.
4. The application should be signed by the Chief Functionary or authorised office bearer of the Association.

[1][CERTIFICATE

(To be submitted along with the application)

This is to certify that the..........................(name of the association) have its registered office at ....(address) has been formed for undertaking activities in its chosen .... (economic, educational cultural, religious and social*) field of activity. The antecedents of the organisation have been verified and there is nothing adverse against them.

2. Its proposed project shall be undertaken in the............................. (District) of.......................(State), the said project will be beneficial to the people living in the area.

3. The grant of prior permission to the aforementioned association to accept foreign contribution amounting to................................ (currency/amount) from.......................(name of address of foreign donor) under the foreign Contribution (Regulation) Act, 1976 for the said project is recommended.

(Recommending authority)**

(With seal)

* Strike out whichever is not applicable.

** Any concerned—

(1) Collector of District:

(2) Department of the State Government;

(3) Ministry/Department of the Government of India.]

[2][FORM FC 2

[*See* rule 3(b)]

APPLICATION FOR SEEKING PRIOR PERMISSION OF THE CENTRAL GOVERNMENT TO ACCEPT FOREIGN HOSPITALITY

[Section 9 read with sections 10(d) and 11(1) of the Foreign Contribution (Regulation) Act, 1976]

1. Name in full (in BLOCK LETTERS)

2. Date of birth

1. Ins. by G.S.R. 63(E), dated 24th January, 2000 (w.e.f. 25-1-2000).
2. Subs. by G.S.R. 755(E), dated 5th November, 1984 (w.e.f. 5-11-1984).

3. Name of father/husband
4. Present address
5. Permanent address
6. Passport particulars (if already in possession)
7. Status:
   (a) Member of Legislature
   (b) Office-bearers of a political party
   (c) Judge of Supreme Court/High Court
   (d) Government Servant
   (e) Employee of a Company/Corporation
   (f) Any person or class of persons not specified in section 9
8. Names of countries/places to be visited with duration of stay
9. The countries and places where foreign hospitality is to be accepted
10. Duration and purpose of visit to the country (ies)/place(s) mentioned in column 9 with specific dates.
11. Particulars of host(s):—
   (a) If an individual, his personal particulars including name, present address, permanent address, nationality, profession.
   (b) If an Organisation/Institution/Association/Trust/Foundation/Trade Union, etc., full particulars thereof including:
      (i) Full name and complete address
      (ii) Address of Head Office/Principal Office
      (iii) Aims and objects
      (iv) Particulars of important office-bearers.
12. *Full particulars, as in Serial No. 11 (a) and (b) of the foreign source in case the actual source extending the hospitality is located in a country other than actually proposed to be visited.
13. Nature and duration of foreign hospitality proposed to be accepted with specific dates and with specific details.
14. Nature of connection/dealings with the host and/or foreign source extending the hospitality.
15. Approximate expenditure to be incurred on hospitality.
16. Any other information of significance which the applicant may like to furnish.

DECLARATION

I hereby declare that the above particulars furnished by me are true and correct.

Place.......................... Signature of the Applicant]

Date..........................

* Delete if not applicable.

[1][FORM FC 3

[*See* rule 4(a)]

Account of foreign Contribution of the year ending on 31st March.......

1. Association's details—

(i) Name and address : ....

(in capital letters) : ....

(ii) Registration number and date : ....

[under Foreign Contribution (Regulation) Act, 1976]

1. Subs. by G.S.R. 8(E), dated 4th January, 1999 (w.e.f. 4-1-1999).

(iii) Prior permission number and date, if not registered : ....

(iv) Nature of association : (1) Cultural, (2) Economic, (3) Educational, (4) Religious, (5) Social

(v) Denomination in case of religious associations : (a) Hindu, (b) Sikh, (c) Muslim, (d) Christian, (e) Buddhist, (f) Others

2. Purpose(s) for which foreign contribution has been received and utilised:

(in Rupees)

Sl. No.	Purpose	Previous Balance		Receipt during the year				Utilised Balance				
				At first recipient		As second/ subsequent recipient						
		In cash	In kind (value)	In cash	In kind (value)	In cash	In kind (value)	Total	In cash	In kind (value)	In cash	In kind (value)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)

1. Theatre/Films etc.
2. Maintenance of places of historical and cultural importance
3. Agricultural activities
4. Animal husbandry
5. Rural development
6. (a) Construction/extension
   (b) Repair/maintenance of school/college buildings
7. (a) Construction/extension
   (b) Repair/maintenance of other buildings (please specify)
8. Research
9. Stipend/scholarship
10. Educational/Literacy programme
11. Vocational/technical training
12. Seminars/conferences/meetings
13. (a) Construction/extension
    (b) Repair/maintenance of places of worship
14. Publication of religious literature
15. Education of priests and preachers
16. Religious functions
17. Care of orphans
18. Help for poor, aged and destitutes
19. Health care and family welfare
20. Welfare of the Scheduled Castes
21. Welfare of the Scheduled Tribes
22. Welfare of Other Backward classes
23. Relief for natural calamities
24. Welfare of Women and Children
25. Environmental programme
26. Establishment expenses
27. Activities other than those mentioned above (with specific details)

TOTAL

CAUTION.— Submission of false information or concealment of material facts shall attract the relevant provisions of the Foreign Contribution (Regulation) Act, 1976 warranting appropriate action.

3. Name of address of the designated branch of the bank and account number (as specified in the application for registration/prior permission or permitted by the Central Government).

A/c No......................................

Bank..

Branch...

Address.......................................

Pin..

4. Donorwise receipts of foreign contribution (in Rupees)

Sl. No.	Institutional/individual/ other donors	Name(s) and address(es)	Purpose(s)	Date and month of Receipt	Amount
(1)	(2)	(3)	(4)	(5)	(6)
	(i) Institutional donors:				
	(ii) Individual donors above rupees one lakh				
	(iii) Individual donors below rupees one lakh (Only columns 4 and 6 need to be filled)				
		Total			

5. Country wise receipts of foreign contribution (in Rupees)

Sl.No.	Name of the country	Amount
(1)	(2)	(3)
	Total	

DECLARATION

I hereby declare that the above particulars furnished by me are true and correct. I also affirm that the foreign contribution has been utilised for purpose(s) for which the association has been registered/prior permission obtained. To the best of my knowledge, I have not concealed or suppressed any fact.

Place............................. Signature of the Chief Functionary

Date............................. (Name of the Chief Functionary and Seal of the Association)

(Certificate to be given by Chartered Accountant)

I/We have audited the account of..(name of association and its full address including State, District and Pin Code, if registered society, its registration number and State of registration, for the year ending 31st March,.............and examined all relevant books and vouchers and certify that according to the audited account—

(i) the brought forward foreign contribution at the beginning of the year was Rs..................

(ii) foreign contribution of/worth Rs..........was received by the Association during the year.................was Rs...........

(iii) the balance of unutilised foreign contribution with the association at the end of year........... was Rs..........

(iv) Certified that the association has maintained the account of foreign contribution and records relating thereto in the manner specified in section 13 of the Foreign Contribution (Regulation) Act, 1976 read with sub-rule (1) of rule 8 of the Foreign Contribution (Regulation) Rules, 1976.

(v) The information furnished in this certificate and in the enclosed Balance-Sheet and Statement of Receipt and Payment is correct as checked by me/us.

Place:.............................. Signature of Chartered Accountant with seal,

Date:.............................. address and registration number]

FORM FC 4

[See rule 4(b)]

INTIMATION TO THE CENTRAL GOVERNMENT OF RECEIPT OF FOREIGN CONTRIBUTION RECEIVED BY A CANDIDATE FOR ELECTION

[Section 6(2) of the Foreign Contribution (Regulation) Act, 1976]

1. Name in full (in block letters)
2. Date of birth
3. Name of father
4. Present address
5. Permanent address
6. Date which duly nominated as a candidate for election to a Legislature and particulars of Legislature [*See* section 2(1)(b) and 2(1)(f) of the Act]
7. Full particulars of foreign contribution received within 180 days immediately proceeding the date on which duly nominated as a candidate for election to the Legislature.
8. Nature and full details of the contribution including value.
9. The mode/channel of receipt.
10. Purpose for which contribution was received.
11. Particulars of the foreign source from which contribution received:
    (a) if an individual, his personal particulars including name, present address, permanent address, nationality, profession
    (b) if an Organisation/Institution/Association/Trust/Foundation/Trade Union, *etc.* full particulars thereof including—
        (i) full name and complete address
        (ii) address of Head Office/Principal Office
        (iii) aims and objects
        (iv) particulars of important office-bearers
12. Nature of connection/dealings with the foreign sources
13. Details of actual utilisation of the Contribution—
    (a) specific purposes for which utilised
    (b) full description of the manner in which utilised
14. Any other information of significance which the application may like to furnish

DECLARATION

I hereby declare that the above particulars furnished by me are true and correct.

Place:.............................. Signature of the candidate

Date:..............................

Certified that the above declaration was signed by Shri.................................. S/o................................. .... resident of.. .... a candidate for election to (*) .... before me on this ....day of 20........

Signature

(Name in block letters)

(Designation..................

(To be signed by a Class I Gazetted Officer** or a Ist Class Magistrate).

* Here specify 'Legislature' as defined in section 2(1)(f) of the Act.

** Of the State/Central Government.

FORM FC 5

[*See* rule 4(c)]

INTIMATION TO THE CENTRAL GOVERNMENT OF RECEIPT OF SCHOLARSHIP, STIPEND OR ANY PAYMENT OF A LIKE NATURE FROM A FOREIGN SOURCE

[Section 7(1) and 7(2) of the Foreign Contribution (Regulation) Act, 1976]

1. Name in full (in block letters)
2. Date of birth
3. Name of father
4. Present address
5. Permanent address
6. Passport particulars
7. Specific details of occupation/profession
8. Particulars of the foreign source from whom scholarship, stipend or payment of a like nature was received—
    (a) if an individual, his personal particulars including name, present address, permanent address, nationality profession
    (b) if an Organisation/Institution/Association/Trust/Foundation/Trade Union, *etc.*, full particulars thereof including—
        (i) full name and complete address
        (ii) address of Head Office/Principal Office
        (iii) aims and objects
        (iv) particulars of important office-bearers
9. Nature and full details of scholarship, stipend or any payment of a like nature received from foreign source, indicating (a) total amount and its break-up under various heads like cost of journey, equipment, clothing, maintenance, tuition fees, residence fees, books, etc. and (b) mode/chennel of receipt
10. Purpose of the scholarship, stipend or any payment of a like nature with specific details of courses attended/to be attended
11. Duration of stay abroad with dates
12. Any other information of significance, which the applicant may like to furnish

DECLARATION

I hereby declare that the above particulars furnished by me are true and correct.

Place......................... Signature of applicant

Date.........................

FORM FC 6

[*See* rule 8(a)]

FOREIGN CONTRIBUTION (ARTICLES) ACCOUNTS

Description of the Article

RECEIPT

Date	Name and addresses of the person from whom received	Mode of receipt	Purpose of receipt	Quantity received	Approx. value of articles received	Date of intimation sent to the Central Government
1	2	3	4	5	6	7

UTILISATION/DISPOSAL

QUANTITY

Date	Name and address of the person to whom issued, sold or otherwise transferred	Purpose for which issued or otherwise transferred	Utilised by the organisation	Sold	Otherwise transferred	If sold the amount for which sold	Reference to entry in the Foreign Contribution (Currency) Account	Balance in stock
8	9	10	11	12	13	14	15	16

DECLARATION

I hereby declare that the above particulars furnished by me are true and correct.

Place.............................. Signature

Date...............................

FORM FC 7

[*See* rule 8(c)]

FOREIGN CONTRIBUTION (SECURITIES) ACCOUNT

(1) Nature of securities

(2) Nominal value of each security

Date	Name and address of the person from whom received	Distinguishing number of each security	Total of securities	Total nominal value of securities	Particulars of permission of the Reserve Bank of India to acquire or to hold foreign securities	Particulars of intimation sent to the Central Government	Date	Dividend or interest received	Date up to which dividend or interest has been received
1	2	3	4	5	6	7	8	9	10

Details of Dividends/Interest received

Reference to the credit entry in the Foreign Contribution (Currency) Account	Date	Name and address of the person to whom sold/transferred	Total No. of securities sold/transferred	Distinguishing number of each security transferred	Total amount for which sold/transferred	Particulars of permission of the Reserved Bank of India to sell/transfer securities	Particulars of intimation sent to the Central Government	Reference to the entry in the Foreign Contribution (Currency) Account
11	12	13	14	15	16	17	18	19

DECLARATION

I hereby declare that the above particulars furnished by me are true and correct.

Place:.............................

Date:..............................

Signature

[1][FORM FC 8

[*See* rule 3A]

FORM OF APPLICATION FOR SEEKING REGISTRATION WHICH THE CENTRAL GOVERNMENT UNDER THE FOREIGN CONTRIBUTION (REGULATION) ACT, 1976 FOR THE ACCEPTANCE OF FOREIGN CONTRIBUTION BY AN ASSOCIATION HAVING A DEFINITE CULTURAL, ECONOMIC, EDUCATIONAL, RELIGIOUS OR SOCIAL PROGRAMME

No.............................. Date............................

To

The Secretary to the Government of India,

Ministry of Home Affairs, Lok Nayak Bhavan,

Khan Market,

New Delhi - 110003.

Subject: Application for registration under the Foreign Contribution (Regulation) Act, 1976 for the acceptance of foreign contribution.

Sir,

I,................................., on behalf of the Association named hereafter apply for registration of the Association under clause (a) of sub-section (1) of section 6 of the Act for the acceptance of foreign contribution.

1. (i) Name of the Association and its complete postal address

Name

Address

Town/City

District

State

Pin Code

(ii) If the Association is a registered trust or Society indicate its—

(a) registration number

(b) place of registration

(c) date of registration

(certified copy of the registration certificate to be attached).

(iii) Nature of Association—

(a) religious, (b) cultural, (c) economic, (d) educational, (e) social

Note.—If a religious Association, State whether (a) Hindu, (b) Sikh, (c) Muslim, (d) Christian, (e) Buddhist, (f) Others

(iv) Please indicate—

(a) the main aim(s) and object(s) of the Association (enclose a copy of the Memorandum of Association and/or the Articles of Association, if applicable)

(b) the main object(s) definite programme(s) for which the foreign contribution is to be accepted/utilised

(v) Please furnish the names and addresses of the members of the Executive Committee/Governing Council etc. of the Association, including the Chief Functionary in the following manner

1. Ins. by G.S.R. 8(E), dated 4th January, 1999 (w.e.f. 4-1-1999).

Sl. No.	Name	Name of Father/ Husband	Nationality	Occupation	Office held in the Association, if any	Relationship with other office-bearers, if any	Address
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

2. Please indicate whether any member of the Executive Committee/Governing Council etc., of the Association, including the Chief Functionary has, in the discharge of his/her official functions—

(a) been convicted by any court of law;

(b) a prosecution for any offence pending against him/her;

(c) been found guilty of diversion or misutilisation of funds of the Association or any other association in the past.

3. Please indicate whether the applicant association is a branch/unit/associate of foreign based organisation or another association already registered under the Act. If so, the name and address of the parent organisation.

4. Please indicate—

(i) Whether the Association was (a) granted prior permission to receive foreign contribution under the Act in the past. If so, the number and date of the letter granted prior permission should be furnished

(b) whether the account of the receipt and utilisation of the foreign contribution received above was sent to the Central Government in the prescribed form. If so, the date of submission of the accounts should be furnished

(ii) whether—

(a) association has received foreign contribution without the prior permission under Act in the past. If so, full particulars of the foreign contribution received along with complete address of the bank branch and bank account number in which deposited should be furnished

(b) said violation has been condoned by the Central Government

(c) association has been prohibited from accepting foreign contribution under this Act

5. Please indicate whether the Association is functioning as editor, owner, printer or publisher of a publication required to be registered as "newspaper" under the Press and Registration of Books Act, 1867. If so, the details thereof

6. Please indicate,—

(i) whether the Association ever applied for registration under the Foreign Contribution (Regulation) Act, 1976, if so,—

(a) the date of submission of application for registration

(b) the number and date of the last communication, if any, received from the Ministry

(c) whether registration was refused

(d) whether application for registration is still pending

(ii) whether the Association has close links with another association, or its unit or branch which has been—

(a) refused registration under the Act

(b) prohibited from accepting foreign contribution

7. Please furnish,—

(i) details of the activities of the Association during the past three years

(ii) copies of the audited statement of accounts of the Association for the past three years

(iii) details of the area(s) of operation

8. Please indicate whether the Association has been specified as an organisation of a political nature, not being a political party, under section 5 of the Act. If so, the details of the notification should be furnished

9. Please indicate—

(i) the name and address of the branch of the bank through which the foreign contribution shall be received

(ii) please specify the account number in the said branch of the bank

[1][9A. Whether a recommendation certificate from the competent authority is attached

(Yes/No)]

10. Any other information which the Association may like to furnish.

Yours faithfully

Chief Functionary

for and on behalf of the Association

(Name of Association)

DECLARATION AND UNDERTAKING

The Association named here-in-above affirms that the information furnished above is correct and undertakes—

(i) to inform the Central Government (Ministry of Home Affairs) within thirty days, if any, change takes place in regard to the name of the Association, its address, its registration, its nature, its aims and objects with documentary evidence effecting the change;

(ii) to obtain prior permission for change of office bearer(s), if, at any point of time such change causes replacement of 50% or more of the office bearers as were mentioned in the application for registration under the Foreign Contribution (Regulation) Act, 1976 and undertakes further not to accept any foreign contribution except with prior permission till the permission to replace the office bearer(s) has been granted;

(iii) not to change the bank or branch of the bank without prior permission of the Central Government. The reasons for change of bank or branch of the bank shall have to be relevant and justifiable; and

(iv) not to accept any foreign contribution unless it has obtained either the registration number, as applied for hereinabove, or prior permission of the Central Government under sub-section (1A) of section 6 of the Foreign Contribution (Regulation) Act, 1976.

(Chief Functionary)

for and on behalf of the Association

(Name of the Association)

Note.— (i) The receipt of application for registration is not a commitment for grant of registration by the Central Government;

(ii) An incomplete application *i.e.*, without the required documents/details/explanations is likely to be rejected summarily; and

(iii) In case the space provided against any column is insufficient separate sheets should be attached. Please use CAPITAL letters.

[1][CERTIFICATE

(To be submitted along with the application)

This is certify that the................................(name of the association) having its registered office at ....(address) has been engaged in economic, educational, cultural, religious and social activities in the..................(District) of ....(State) for the last...................years.

2. It has undertaken welfare activities in the area and has incurred expenditure (excluding administrative expenditure) amounting to....................(amount in rupees) during the last three years on its chosen (economic, educational, cultural, religious and social) field of activity.

1. Ins. by G.S.R. 63(E), dated 24th January, 2000 (w.e.f. 25-1-2000).

3. The antecedents of the organisation have been verified and there is nothing adverse against them.

4. The grant of registration to the aforesaid association to accept foreign contribution under the Foreign Contribution (Regulation) Act, 1976, is recommended.

(Recommending authority)**

(With Seal)

*Strike out whichever is not applicable.

** Any concerned—

(1) Collector of District;

(2) Department of the State Government

(3) Ministry/Department of the Government of India.]

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FOREIGN CONTRIBUTION (ACCEPTANCE OR RETENTION OF GIFTS OR PRESENTATIONS) REGULATIONS, 1978[1]

In pursuance of clause (d) of section 8 of the Foreign Contribution (Regulation) Act, 1976 (49 of 1976), the Central Government hereby makes the following regulations with regard to the acceptance or retention of foreign contribution by way of a gift or presentation made to any person specified in section 4 as a member of any Indian delegation, namely:—

1. Short title and commencement.—(1) These regulations may be called the Foreign Contribution (Acceptance or Retention of Gifts or Presentations) Regulations, 1978.

(2) They shall come into force on the date of their publication in the Officia: Gazette.

2. Definitions.—In these regulations, unless the context otherwise requires,—

(a) "Act" means the Foreign Contribution (Regulation) Act, 1976 (49 of 1976).

(b) words and expressions used in these regulations and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Regulation of acceptance or retention of foreign contribution by way of gift or presentation.—(1) Any person specified in section 4 of the Act who is a member of any Indian delegation may accept any foreign contribution by way of a gift or presentation made to him as a member of such delegation (hereinafter referred to as such person), subject to the provisions of this regulation.

(2) Where such person receives any foreign contribution by way of gift or presentation, he shall, within thirty days of the receipt thereof, intimate to [2][the leader of the Indian delegation,] the Secretary to the Government of India in the Ministry of Home Affairs, Ministry of External Affairs and the Ministry or the Department of the Government of India sponsoring the delegation of which he is a member, in writing,—

(a) the fact of his having received such gift or presentation,

(b) the foreign source from which it is received,

[3][(c) its approximate market value in the country of origin,]

(d) the place in which, and the date on which, it is received, and

(e) such other details relating thereto as he may, in the circumstances, consider appropriate:

1. *Vide* S.O. 402(E), dated 22nd June, 1978, published in the Gazette of India, Extra., Pt. II. Sec. 3(ii), dated 22nd June, 1978.
2. Ins. by S.O. 298(E), dated 21st April, 1989 (w.e.f. 21-4-1989).
3. Subs. by S.O. 786(E), dated 5th November, 1981 (w.e.f. 5-11-1981).

Provided that in a case where such person received such gift or presentation while he is visiting any foreign country or territory outside India, such intimation may be made by him within thirty days from the date of his return to India:

[1][Provided further that the requirements contained in these regulations shall be complied with by such person if the leader of the Indian delegation is of the opinion that the market value, in India, of such gift(s) or presentation(s) exceeds Rs. 1,000 and the said leader directs in writing to such person to comply with such of the requirements of these regulations, as may be applicable in his case.]

(3) Every gift or presentation received by such person from any foreign source shall be deposited by him with the Secretary to the Government of India in the Ministry or the Department which had sponsored the delegation of which he was the member, within thirty days from the date of intimation by him of such receipt under sub-regulation (2).

(4) The Secretary to the Government of India, referred to in sub-regulation (3), shall forward every such gift or presentation deposited with him to the *Toshakhana*, in the Ministry of External Affairs for assessment of its market value in the country of origin.

(5) Such assessment shall be made within thirty days from the date of receipt of the gift or presentation in the *Toshakhana*, in accordance with the rules applicable, for the time being in force, to the valuation of articles in the *Toshakhana*, and such person shall be intimated in writing of such assessment forthwith.

[2][(6) If any question arises relating to the assessment so made under sub-regulation (5) it shall be referred to the Central Government who shall decided the same.]

(7) Every such gift or presentation, [3][the market value in the country of origin] of which as assessed under sub-regulation (5), does not exceed [4][three thousand rupees,] shall be returned to such person for retention by him:

Provided that where more than one such gift or presentation is received by such person while he is on delegation, such person be entitled to retain only one such gift or presentation:

[1][Provided further that where more than one gift or presentation has been received by such person, while he is in on delegation, and the aggregate market value, in India, of all such gifts or presentations, does not exceed Rs. 1,000, as determined by the leader of the Indian delegation, such person may retain all such gifts/presentations].

(8) Every such gift or presentation, [3][the market value in the country origin] of which, as assessed under sub-regulation (5), exceeds [4][three thousand rupees] shall be retained in the *Toshakhana:*

Provided such person shall have the option, that exercised by him within thirty days from the date of receipt by him of the intimation under sub-regulation (5), to purchase such gift or presentation on payment of the difference between [3][the market value in country of origin] of such gift or presentation, as assessed under sub-regulation (5) and [4][three thousand rupees]:

Provided further that the option once exercised under this sub-regulation shall be final.



1. Ins. by S.O. 298(E), dated 21st April, 1989 (w.e.f. 21-4-1989).
2. Subs. by S.O. 980(E), dated 31st December, 1984 (w.e.f. 31-12-1984).
3. Ins. by S.O. 798(E), dated 21st April, 1989 (w.e.f. 5-11-1981)
4. Subs. by 786(E), dated 5th November, 1981 (w.e.f. 5-11-1981).

PART J

INCOME-TAX ACT

AS AMENDED BY

FINANCE (NO. 2) ACT, 2014

(25 OF 2014)

35

THE INCOME-TAX ACT

2. Definitions.—In this Act, unless the context otherwise requires,—

(1) "advance tax" means the advance tax payable in accordance with the provisions of Chapter XVIIC;

(1A) "agricultural income" means—

(a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes;

(b) any income derived from such land by—

(i) agriculture; or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause;

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on:

Provided that—

(i) the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building, and

(ii) the land is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such or where the land is not so assessed to land revenue or subject to a local rate, it is not situated—

(A) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand or

(B) in any area within the distance, measured aerially,—

(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten thousand but not exceeding one lakh; or

(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than one lakh but not exceeding ten lakh; or

(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten lakh.

Explanation 1.—For the removal of doubts, it is hereby declared that revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of this section;

Explanation 2.—For the removal of doubts, it is hereby declared that income derived from any building or land referred to in sub-clause (c) arising from the use of such building or land for any purpose (including letting for residential purpose or for the purpose of any business or profession) other than agriculture falling under sub-clause (a) or sub-clause (b) shall not be agricultural income.

Explanation 3.—For the purposes of this clause, any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income.

Explanation 4.—For the purposes of clause (ii) of the proviso to sub-clause (c), "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;

(8) "assessment" includes reassessment;

(9) "assessment year" means the period of twelve months commencing on the 1st day of April every year;

(9A) "Assistant Commissioner" means a person appointed to be an Assistant Commissioner of Income-tax or a Deputy Commissioner of Income-tax under sub-section (1) of section 117;

(9B) "Assistant Director" means a person appointed to be an Assistant Director of Income-tax under sub-section (1) of section 117;

(10) "average rate of income-tax" means the rate arrived at by dividing the amount of income-tax calculated on the total income by such total income;

(11) "block of assets" means a group of assets falling within a class of assets comprising—

(a) tangible assets, being buildings, machinery, plant or furniture;

(b) intangible assets, being know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature,

in respect of which the same percentage of depreciation is prescribed;

(12) "Board" means the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);

(12A) "books or books of account" includes ledgers, day-books, cash books, account-books and other books, whether kept in the written form or as print-outs of data stored in a floppy, disc, tape or any other form of electro-magnetic data storage device;

(13) "business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;

(14) capital asset" means—

(a) property of any kind held by an assessee, whether or not connected with his business or profession;

(b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992).

but does not include—

(i) any stock-in-trade other than the securities referred to in sub-clause (b),

(ii) personal effects, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him, but excludes—

(a) jewellery;

(b) archaeological collections;

(c) drawings;

(d) paintings;

(e) sculptures; or

(f) any work of art.

Explanation 1.—For the purposes of this sub-clause, "jewellery" includes—

(a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;

(b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel;

Explanation 2.—For the purposes of this clause—

(a) the expression "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the *Explanation* to section 115AD;

(b) the expression "securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(iii) agricultural land in India, not being land situate—

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand or

(b) in any area within the distance, measured aerially,—

(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or

(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or

(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.

Explanation.—For the purposes of this sub-clause, "population" means the population according to the last preceding census of

which the relevant figures have been published before the first day of the previous year;

(iv) 6½ per cent. Gold Bonds, 1977, or 7 per cent. Gold Bonds, 1980, or National Defence Gold Bonds, 1980, issued by the Central Government;

(v) Special Bearer Bonds, 1991, issued by the Central Government;

(vi) Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999, notified by the Central Government;

Explanation.—For the removal of doubts, it is hereby clarified that "property" includes and shall be deemed to have always included any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever;

(15) "charitable purpose" includes relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity:

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is twenty-five lakh rupees or less in the previous year;

(15A) "Chief Commissioner" means a person appointed to be a Chief Commissioner of Income-tax or a Principal Chief Commissioner of Income-tax under sub-section (1) of section 117;

(15B) "child", in relation to an individual, includes a step-child and an adopted child of that individual;

(16) "Commissioner" means a person appointed to be a Commissioner of Income-tax or a Director of Income-tax or a Principal Commissioner of Income-tax or a Principal Director of Income-tax under sub-section (1) of section 117;

(16A) "Commissioner (Appeals)" means a person appointed to be a Commissioner of Income-tax (Appeals) under sub-section (1) of section 117;

(22) "dividend" includes—

(a) any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company;

(b) any distribution to its shareholders by a company of debentures, debenture-stock, or deposit certificates in any form, whether with or without interest, and any distribution to its preference shareholders of shares, by way of bonus, to the extent to which the company possesses accumulated profits, whether capitalised or not;

(c) any distribution made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalised or not;

(d) any distribution to its shareholders by a company on the reduction of its capital, to the extent to which the company possesses accumulated profits which arose after the end of the previous year ending next before the 1st

day of April, 1933, whether such accumulated profits have been capitalised or not;

(e) any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent. of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern) or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits;

but "dividend" does not include—

(i) a distribution made in accordance with sub-clause (c) or sub-clause (d) in respect of any share issued for full cash consideration, where the holder of the share is not entitled in the event of liquidation to participate in the surplus assets;

(ia) a distribution made in accordance with sub-clause (c) or sub-clause (d) in so far as such distribution is attributable to the capitalised profits of the company representing bonus shares allotted to its equity shareholders after the 31st day of March, 1964, and before the 1st day of April, 1965;

(ii) any advance or loan made to a shareholder or the said concern by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company;

(iii) any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of sub-clause (c), to the extent to which it is so set off;

(iv) any payment made by a company on purchase of its own shares from a shareholder in accordance with the provisions of section 77A of the Companies Act, 1956 (1 of 1956);

(v) any distribution of shares pursuant to a demerger by the resulting company to the shareholders of the demerged company (whether or not there is a reduction of capital in the demerged company);

Explanation 1.—The expression "accumulated profits", wherever it occurs in this clause, shall not include capital gains arising before the 1st day of April, 1946, or after the 31st day of March, 1948, and before the 1st day of April, 1956;

Explanation 2.—The expression "accumulated profits", in sub-clauses (a), (b), (d) and (e), shall include all profits of the company up to the date of distribution or payment referred to in those sub-clauses, and in sub-clause (c) shall include all profits of the company up to the date of liquidation, but shall not, where the liquidation is consequent on the compulsory acquisition of its undertaking by the Government or a corporation owned or controlled by the Government under any law for the time being in force, include any profits of the company prior to three successive previous years immediately preceding the previous year in which such acquisition took place;

Explanation 3.—For the purposes of this clause,—

(a) "concern" means a Hindu undivided family, or a firm or an association of persons or a body of individuals or a company;

(b) a person shall be deemed to have a substantial interest in a concern, other than a company, if he is, at any time during the previous year, beneficially entitled to not less than twenty per cent. of the income of such concern;

(22AA) "document" includes an electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(22AAA) "electoral trust" means a trust so approved by the Board in accordance with the scheme made in this regard by the Central Government;

(22B) "fair market value", in relation to a capital asset, means—

(i) the price that the capital asset would ordinarily fetch on sale in the open market on the relevant date; and

(ii) where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with the rules made under this Act;

(23B) "fringe benefits" means any fringe benefits referred in section 115WB;

(24) "income" includes—

(i) profits and gains;

(ii) dividend;

(iia) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes, or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) or by any university or other educational institution referred to in sub-clause (vi) or by any hospital or other institution referred to in sub-clause (via) of clause (23C), of section 10 or by an electoral trust;

Explanation.—For the purposes of this sub-clause, "trust" includes any other legal obligation;

(iii) the value of any perquisite or profit in lieu of salary taxable under clauses (2) and (3) of section 17;

(iiia) any special allowance or benefit, other than perquisite included under sub-clause (iii), specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit;

(iiib) any allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living;

(iv) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid;

(iva) the value of any benefit or perquisite, whether convertible into money or not, obtained by any representative assessee mentioned in clause (iii) or clause (iv) of sub-section (1) of section 160 or by any person on whose behalf or for whose benefit any income is receivable by the representative assessee (such person being hereafter in this sub-clause referred to as the "beneficiary") and any sum paid by the representative assessee in respect of any obligation which, but for such payment, would have been payable by the beneficiary;

(v) any sum chargeable to income-tax under clauses (ii) and (iii) of section 28 or section 41 or section 59;

(va) any sum chargeable to income-tax under clause (iiia) of section 28;

(vb) any sum chargeable to income-tax under clause (iiib) of section 28;

(vc) any sum chargeable to income-tax under clause (iiic) of section 28;

(vd) the value of any benefit or perquisite taxable under clause (iv) of section 28;

(ve) any sum chargeable to income-tax under clause (v) of section 28;

(vi) any capital gains chargeable under section 45;

(vii) the profits and gains of any business of insurance carried on by a mutual insurance company or by a co-operative society, computed in accordance with section 44 or any surplus taken to be such profits and gains by virtue of provisions contained in the First Schedule;

(viia) the profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members;

(ix) any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever;

Explanation.—For the purposes of this sub-clause,—

(i) "lottery" includes winnings, from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever, under any scheme or arrangement by whatever name called;

(ii) "card game and other game of any sort" includes any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game;

(x) any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), or any other fund for the welfare of such employees;

(xi) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

Explanation.—For the purposes of this clause, the expression "Keyman insurance policy" shall have the meaning assigned to it in the *Explanation* to clause (10D) of section 10;

(xii) any sum referred to in clause (va) of section 28;

(xiii) any sum referred to in clause (v) of sub-section (2) of section 56;

(xiv) any sum referred to in clause (vi) of sub-section (2) of section 56;

(xv) any sum of money or value of property referred to in clause (vii) or clause (viia) of sub-section (2) of section 56;

(xvi) any consideration received for issue of shares as exceeds the fair market value of the shares referred to in clause (viib) of sub-section (2) of section 56;

(xvii) any sum of money referred to in clause (ix) of sub-section (2) of section 56;

(25) "Income-tax Officer" means a person appointed to be an Income-tax Officer under section 117;

(25A) "India" means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and subsoil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other

Maritime Zones Act, 1976 (80 of 1976), and the air space above its territory and territorial waters;

(30) "non-resident" means a person who is not a "resident", and for the purposes of sections 92, 93 and 168, includes a person who is not ordinarily resident within the meaning of clause (6) of section 6;

(31) "person" includes—

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals, whether incorporated or not,

(vi) a local authority, and

(vii) every artificial juridical person, not falling within any of the preceding sub-clauses;

Explanation.—For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains;

(32) "person who has a substantial interest in the company" in relation to a company, means a person who is the beneficial owner of shares, not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits, carrying not less than twenty per cent. of the voting power;

(34) "previous year" means the previous year as defined in section 3;

(36) "profession" includes vocation;

(37A) "rate or rates in force" or "rates in force", in relation to an assessment year or financial year, means—

(i) for the purposes of calculating income-tax under the first proviso to sub-section (5) of section 132, or computing the income-tax chargeable under sub-section (4) of section 172 or sub-section (2) of section 174 or section 175 or sub-section (2) of section 176 or deducting income-tax under section 192 from income chargeable under the head "Salaries" or computation of the "advance tax" payable under Chapter XVIIC, in a case not falling under section 115A or section 115B or section 115BB or section 115BBB or section 115E or section 164 or section 164A or section 167B, the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year, and for the purposes of computation of the "advance tax" payable under Chapter XVIIC in a case falling under section 115A or section 115B or section 115BB or section 115BBB or section 115E or section 164 or section 164A or section 167B, the rate or rates specified in section 115A or section 115B or section 115BB or section 115BBB or section 115E or section 164 or section 164A or section 167B, as the case may be, or the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year, whichever is applicable;

(ii) for the purposes of deduction of tax under sections 193, 194, 194A, 194B, 194BB and 194D, the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year;

(iii) for the purposes of deduction of tax under section 195, the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year

or the rate or rates of income-tax specified in an agreement entered into by the Central Government under section 90, or an agreement notified by the Central Government under section 90A, whichever is applicable by virtue of the provisions of section 90, or section 90A, as the case may be;

(38) "recognised provident fund" means a provident fund which has been and continues to be recognised by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in accordance with the rules contained in Part A of the Fourth Schedule, and includes a provident fund established under a scheme framed under the Employees' Provident Funds Act, 1952 (19 of 1952);

(40) "regular assessment" means the assessment made under sub-section (3) of section 143 or section 144;

(41) "relative", in relation to an individual, means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual;

(43) "tax" in relation to the assessment year commencing on the 1st day of April, 1965, and any subsequent assessment year means income-tax chargeable under the provisions of this Act, and in relation to any other assessment year income-tax and super-tax chargeable under the provisions of this Act prior to the aforesaid date and in relation to the assessment year commencing or the 1st day of April, 2006, and any subsequent assessment year includes the fringe benefit tax payable under section 115WA;

(43A) "tax credit certificate" means a tax credit certificate granted to any person in accordance with the provisions of Chapter XXII-B and any scheme made thereunder;

(44) "Tax Recovery Officer" means any Income-tax Officer who may be authorised by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, by general or special order in writing, to exercise the powers of a Tax Recovery Officer and also to exercise or perform such powers and functions which are conferred on, or assigned to, an Assessing Officer under this Act and which may be prescribed;

(45) "total income" means the total amount of income referred to in section 5, computed in the manner laid down in this Act;

(47) "transfer", in relation to a capital asset, includes,—

(i) the sale, exchange or relinquishment of the asset; or

(ii) the extinguishment of any rights therein; or

(iii) the compulsory acquisition thereof under any law; or

(iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment; or

(iva) the maturity or redemption of a zero coupon bond; or

(v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882); or

(vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property:

Explanation 1.—For the purposes of sub-clauses (v) and (vi), "immovable property" shall have the same meaning as in clause (d) of section 269UA.

Explanation 2.—For the removal of doubts, it is hereby clarified that "transfer" includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India;

(48) "Zero coupon bond" means a bond—

(a) issued by any infrastructure capital company or infrastructure capital fund or public sector company or scheduled bank on or after the 1st day of June, 2005;

(b) in respect of which no payment and benefit is received or receivable before maturity or redemption from infrastructure capital company or infrastructure capital fund or public sector company or scheduled bank; and

(c) which the Central Government may, by notification in the Official Gazette, specify in this behalf.

Explanation.—For the purposes of this clause, the expression "scheduled bank" shall have the meaning assigned to it in clause (ii) of the *Explanation* to sub-clause (c) of clause (viia) of sub-section (1) of section 36.

3. "Previous year" defined.—For the purposes of this Act, "previous year" means the financial year immediately preceding the assessment year:

Provided that in the case of a business or profession newly set up, or a source of income newly coming into existence, in the said financial year, the previous year shall be the period beginning with the date of setting up of the business or profession or, as the case may be, the date on which the source of income newly comes into existence and ending with the said financial year.

CHAPTER II
BASIS OF CHARGE

4. Charge of income-tax.—(1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions (including provisions for the levy of additional income-tax) of, this Act in respect of the total income of the previous year of every person:

Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.

(2) In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.

5. Scope of total income.—(1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which—

(a) is received or is deemed to be received in India in such year by or on behalf of such person; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year; or

(c) accrues or arises to him outside India during such year:

Provided that in the case of a person not ordinarily resident in India within the meaning of sub-section (6) of section 6, the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India.

(2) Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which—

(a) is received or is deemed to be received in India in such year by or on behalf of such person; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year.

Explanation 1.—Income accruing or arising outside India shall not be deemed to be received in India within the meaning of this section by reason only of the fact that it is taken into account in a balance-sheet prepared in India.

Explanation 2.—For the removal of doubts, it is hereby declared that income which has been included in the total income of a person on the basis that it has accrued or arisen or is deemed to have accrued or arisen to him shall not again be so included on the basis that it is received or deemed to be received by him in India.

6. Residence in India.—For the purposes of this Act,—

(1) An individual is said to be resident in India in any previous year, if he—

(a) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more; or

[***]

(c) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

Explanation.—In the case of an individual,—

(a) being a citizen of India, who leaves India in any previous year as a member of the crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or for the purposes of employment outside India, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted;

(b) being a citizen of India, or a person of Indian origin within the meaning of *Explanation* to clause (e) of section 115C, who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words one hundred and eighty-two days had been substituted.

(2) A Hindu undivided family, firm or other association of persons is said to be resident in India in any previous year in every case except where during that year the control and management of its affairs is situated wholly outside India.

(3) A company is said to be resident in India in any previous year,if—

(i) it is an Indian company; or

(ii) during that year, the control and management of its affairs is situated wholly in India.

(4) Every other person is said to be resident in India in any previous year in every case, except where during that year the control and management of his affairs is situated wholly outside India.

(5) If a person is resident in India in a previous year relevant to an assessment year in respect of any source of income, he shall be deemed to be resident in India in the previous year relevant to the assessment year in respect of each of his other sources of income.

(6) A person is said to be "not ordinarily resident" in India in any previous year if such person is—

(a) an individual who has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less; or

(b) a Hindu undivided family whose manager has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less.

CHAPTER III

INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

10. Incomes not included in total income.—In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

(1) agricultural income;

(2) subject to the provisions of sub-section (2) of section 64, any sum received by an individual as a member of a Hindu undivided family, where such sum has been paid out of the income of the family, or, in the case of any impartible estate where such sum has been paid out of the income of the estate belonging to the family;

(2A) in the case of a person being a partner of a firm which is separately assessed as such, his share in the total income of the firm.

Explanation.—For the purposes of this clause, the share of a partner in the total income of a firm separately assessed as such shall, notwithstanding anything contained in any other law, be an amount which bears to the total income of the firm the same proportion as the amount of his share in the profits of the firm in accordance with the partnership deed bears to such profits;

(4) (i) in the case of a non-resident, any income by way of interest on such securities or bonds as the Central Government may, by notification in the Official Gazette, specify in this behalf, including income by way of premium on the redemption of such bonds:

Provided that the Central Government shall not specify, for the purposes of this sub-clause, such securities or bonds on or after the 1st day of June, 2002;

(ii) in the case of an individual, any income by way of interest on moneys standing to his credit in a Non-Resident (External) Account in any bank in India in accordance with the Foreign Exchange Management Act, 1999 (42 of 1999), and the rules made thereunder:

Provided that such individual is a person resident outside India as defined in clause (q) of section 2 of the said Act or is a person who has been permitted by the Reserve Bank of India to maintain the aforesaid Account;

(4B) in the case of an individual, being a citizen of India or a person of Indian origin, who is a non-resident, any income from interest on such savings certificates issued before the 1st day of June, 2002, by the Central Government

as that Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the individual has subscribed to such certificates in convertible foreign exchange remitted from a country outside India in accordance with the provisions of the Foreign Exchange Management Act, 1999 (42 of 1999), and any rules made thereunder:

Explanation.—For the purposes of this clause,—

(a) a person shall be deemed to be of Indian origin if he, or either of his parents or any of his grandparents, was born in undivided India;

(b) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Management Act, 1999 (42 of 1999), and any rules made thereunder;

(5) in the case of an individual, the value of any travel concession or assistance received by, or due to, him,—

(a) from his employer for himself and his family, in connection with his proceeding on leave to any place in India;

(b) from his employer or former employer for himself and his family, in connection with his proceeding to any place in India after retirement from service or after the termination of his service;

subject to such conditions as may be prescribed (including conditions as to number of journeys and the amount which shall be exempt per head) having regard to the travel concession or assistance granted to the employees of the Central Government:

Provided that the amount exempt under this clause shall in no case exceed the amount of expenses actually incurred for the purpose of such travel:

Explanation.—For the purposes of this clause, "family" in relation to an individual, means—

(i) the spouse and children of the individual; and

(ii) the parents, brothers and sisters of the individual or any of them, wholly or mainly dependent on the individual;

(6) in the case of an individual who is not a citizen of India,—

(ii) the remuneration received by him as an official, by whatever name called, of an embassy, high commission, legation, commission, consulate, or the trade representation of a foreign State, or as a member of the staff of any of these officials, for service in such capacity:

Provided that the remuneration received by him as a trade commissioner or other official representative in India of the Government of a foreign State (not holding office as such in an honorary capacity), or as a member of the staff of any of those officials, shall be exempt only if the remuneration of the corresponding officials or, as the case may be, members of the staff, if any, of the Government resident for similar purposes in the country concerned enjoys a similar exemption in that country:

Provided further that such members of the staff are subjects of the country represented and are not engaged in any business or profession or employment in India otherwise than as members of such staff;

(vi) the remuneration received by him as an employee of a foreign enterprise for services rendered by him during his stay in India, provided the following conditions are fulfilled—

(a) the foreign enterprise is not engaged in any trade or business in India,

(b) his stay in India does not exceed in the aggregate a period of ninety days in such previous year; and

(c) such remuneration is not liable to be deducted from the income of the employer chargeable under this Act;

(viii) any income chargeable under the head "Salaries" received by or due to any such individual being a non-resident as remuneration for services rendered in connection with his employment on a foreign ship where his total stay in India does not exceed in the aggregate a period of ninety days in the previous year;

(xi) the remuneration received by him as an employee of the Government of a foreign State during his stay in India in connection with his training in any establishment or office of, or in any undertaking owned by,—

(i) the Government; or

(ii) any company in which the entire paid-up share capital is held by the Central Government, or any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, or

(iii) any company which is a subsidiary of a company referred to in item (ii); or

(iv) any corporation established by or under a Central, State or Provincial Act; or

(v) any society registered under the Societies Registration Act, 1860 (14 of 1860), or under any other corresponding law for the time being in force and wholly financed by the Central Government, or any State Government or State Governments or partly by the Central Government and partly by one or more State Governments;

(6A) where in the case of a foreign company deriving income by way of royalty or fees for technical services received from Government or an Indian concern in pursuance of an agreement made by the foreign company with Government or the Indian concern after the 31st day of March, 1976, but before the 1st day of June, 2002 and,—

(a) where the agreement relates to a matter included in the industrial policy, for the time being in force, of the Government of India, such agreement is in accordance with that policy; and

(b) in any other case, the agreement is approved by the Central Government,

the tax on such income is payable, under the terms of the agreement, by Government or the Indian concern to the Central Government, the tax so paid:

Explanation.—For the purposes of this clause and clause (6B),—

(a) "fees for technical services" shall have the same meaning as in *Explanation* 2 to clause (vii) of sub-section (1) of section 9;

(b) "foreign company" shall have the same meaning as in section 80B;

(c) "royalty" shall have the same meaning as in *Explanation* 2 to clause (vi) of sub-section (1) of section 9;

(6B) where in the case of a non-resident (not being a company) or of a foreign company deriving income (not being salary, royalty or fees for technical services) from Government or an Indian concern in pursuance of an agreement

entered into before the 1st day of June, 2002 by the Central Government with the Government of a foreign State or an international organisation, the tax on such income is payable by Government or the Indian concern to the Central Government under the terms of that agreement or any other related agreement approved before that date by the Central Government, the tax so paid;

(6BB) where in the case of the Government of a foreign State or a foreign enterprise deriving income from an Indian company engaged in the business of operation of aircraft, as a consideration of acquiring an aircraft or an aircraft engine (other than payment for providing spares, facilities or services in connection with the operation of leased aircraft) on lease under an agreement entered into after the 31st day of March, 1997, but before the 1st day of April, 1999, or entered into after the 31st day of March, 2007 and approved by the Central Government in this behalf and the tax on such income is payable by such Indian company under the terms of that agreement to the Central Government, the tax so paid:

Explanation.—For the purposes of this clause, the expression "foreign enterprise" means a person who is a non-resident;

(6C) any income arising to such foreign company, as the Central Government may, by notification in the Official Gazette, specify in this behalf, by way of royalty or fees for technical services received in pursuance of an agreement entered into with that Government for providing services in or outside India in projects connected with security of India;

(7) any allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for rendering service outside India;

(8) in the case of an individual who is assigned to duties in India in connection with any co-operative technical assistance programmes and projects in accordance with an agreement entered into by the Central Government and the Government of a foreign State (the terms whereof provide for the exemption given by this clause)—

(a) the remuneration received by him directly or indirectly from the Government of that foreign State for such duties, and

(b) any other income of such individual which accrues or arises outside India, and is not deemed to accrue or arise in India, in respect of which such individual is required to pay any income or social security tax to the Government of that foreign State;

(8A) in the case of a consultant—

(a) any remuneration or fee received by him or it, directly or indirectly, out of the funds made available to an international organisation hereafter referred to in this clause and clause (8B) as the agency under a technical assistance grant agreement between the agency and the Government of a foreign State; and

(b) any other income which accrues or arises to him or it outside India, and is not deemed to accrue or arise in India, in respect of which such consultant is required to pay any income or social security tax to the Government of the country of his or its origin:

Explanation.—In this clause, "consultant" means—

(i) any individual, who is either not a citizen of India or, being a citizen of India, is not ordinarily resident in India; or

(ii) any other person, being a non-resident,

engaged by the agency for rendering technical services in India in connection with any technical assistance programme or project, provided the following conditions are fulfilled, namely:—

(1) the technical assistance is in accordance with an agreement entered into by the Central Government and the agency; and

(2) the agreement relating to the engagement of the consultant is approved by the prescribed authority for the purposes of this clause;

(8B) in the case of an individual who is assigned to duties in India in connection with any technical assistance programme and project in accordance with an agreement entered into by the Central Government and the agency—

(a) the remuneration received by him, directly or indirectly, for such duties from any consultant referred to in clause (8A); and

(b) any other income of such individual which accrues or arises outside India, and is not deemed to accrue or arise in India, in respect of which such individual is required to pay any income or social security tax to the country of his origin, provided the following conditions are fulfilled, namely:—

(i) the individual is an employee of the consultant referred to in clause (8A) and is either not a citizen of India or, being a citizen of India, is not ordinarily resident in India; and

(ii) the contract of service of such individual is approved by the prescribed authority before the commencement of his service;

(9) the income of any member of the family of any such individual as is referred to in clause (8) or clause (8A) or, as the case may be, clause (8B) accompanying him to India, which accrues or arises outside India, and is not deemed to accrue or arise in India, in respect of which such member is required to pay any income or social security tax to the Government of that foreign State or, as the case may be, country of origin of such member;

(10) (i) any death-cum-retirement gratuity received under the revised Pension Rules of the Central Government or, as the case may be, the Central Civil Services (Pension) Rules, 1972, or under any similar scheme applicable to the members of the civil services of the Union or holders of posts connected with defence or of civil posts under the Union (such members or holders being persons not governed by the said Rules) or to the members of the all-India services or to the members of the civil services of a State or holders of civil posts under a State or to the employees of a local authority or any payment of retiring gratuity received under the Pension Code or Regulations applicable to the members of the defence services;

(ii) any gratuity received under the Payment of Gratuity Act, 1972 (39 of 1972), to the extent it does not exceed an amount calculated in accordance with the provisions of sub-sections (2) and (3) of section 4 of that Act;

(iii) any other gratuity received by an employee on his retirement or on his becoming incapacitated prior to such retirement or on termination of his employment, or any gratuity received by his widow, children or dependants on his death, to the extent it does not, in either case, exceed one-half month's salary for each year of completed service, calculated on the basis of the average salary for the ten months immediately preceding the month in which any such event occurs, subject to such limit as the Central Government may, by notification in the Official Gazette, specify in this behalf having regard to the limit applicable in this behalf to the employees of that Government:

Provided that where any gratuities referred to in this clause are received by an employee from more than one employer in the same previous year, the aggregate amount exempt from income-tax under this clause shall not exceed the limit so specified:

Provided further that where any such gratuity or gratuities was or were received in any one or more earlier previous years also and the whole or any part of the amount of such gratuity or gratuities was not included in the total income of the assessee of such previous year or years, the amount exempt from income-tax under this clause shall not exceed the limit so specified as reduced by the amount or, as the case may be, the aggregate amount not included in the total income of any such previous year or years:

Explanation.—In this clause, and in clause (10AA), "salary" shall have the meaning assigned to it in clause (h) of rule 2 of Part A of the Fourth Schedule;

(10A) (i) any payment in commutation of pension received under the Civil Pensions (Commutation) Rules of the Central Government or under any similar scheme applicable to the members of the civil services of the Union or holders of posts connected with defence or of civil posts under the Union (such members or holders being persons not governed by the said Rules) or to the members of the all-India services or to the members of the defence services or to the members of the civil services of a State or holders of civil posts under a State or to the employees of a local authority or a corporation established by a Central, State or Provincial Act;

(ii) any payment in commutation of pension received under any scheme of any other employer, to the extent it does not exceed—

(a) in a case where the employee receives any gratuity, the commuted value of one-third of the pension which he is normally entitled to receive, and

(b) in any other case, the commuted value of one-half of such pension,

such commuted value being determined having regard to the age of the recipient, the state of his health, the rate of interest and officially recognised tables of mortality;

(iii) any payment in commutation of pension received from a fund under clause (23AAB);

(10AA)(i) any payment received by an employee of the Central Government or a State Government as the cash equivalent of the leave salary in respect of the period of earned leave at his credit at the time of his retirement whether on superannuation or otherwise;

(ii) any payment of the nature referred to in sub-clause (i) received by an employee, other than an employee of the Central Government or a State Government, in respect of so much of the period of earned leave at his credit at the time of his retirement whether on superannuation or otherwise as does not exceed ten months, calculated on the basis of the average salary drawn by the employee during the period of ten months immediately preceding his retirement whether on superannuation or otherwise, subject to such limit as the Central Government may, by notification in the Official Gazette, specify in this behalf having regard to the limit applicable in this behalf to the employees of that Government:

Provided that where any such payments are received by an employee from more than one employer in the same previous year, the aggregate amount

exempt from income-tax under this sub-clause I shall not exceed the limit so specified:

Provided further that where any such payment or payments was or were received in any one or more earlier previous years also and the whole or any part of the amount of such payment or payments was or were not included in the total income of the assessee of such previous year or years, the amount exempt from income-tax under this sub-clause shall not exceed the limit so specified, as reduced by the amount or, as the case may be, the aggregate amount not included in the total income of any such previous year or years:

Explanation.—For the purposes of sub-clause (ii)—

the entitlement to earned leave of an employee shall not exceed thirty days for every year of actual service rendered by him as an employee of the employer from whose service he has retired;

(10B) any compensation received by a workman under the Industrial Disputes Act, 1947 (14 of 1947), or under any other Act or rules, orders or notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise, at the time of his retrenchment:

Provided that the amount exempt under this clause shall not exceed—

(i) an amount calculated in accordance with the provisions of clause (b) of section 25F of the Industrial Disputes Act, 1947 (14 of 1947); or

(ii) such amount, not being less than fifty thousand rupees, as the Central Government may, by notification in the Official Gazette, specify in this behalf,

whichever is less:

Provided further that the preceding proviso shall not apply in respect of any compensation received by a workman in accordance with any scheme which the Central Government may, having regard to the need for extending special protection to the workmen in the undertaking to which such scheme applies and other relevant circumstances, approve in this behalf:

Explanation.—For the purposes of this clause—

(a) compensation received by a workman at the time of the closing down of the undertaking in which he is employed shall be deemed to be compensation received at the time of his retrenchment;

(b) compensation received by a workman, at the time of the transfer (whether by agreement or by operation of law) of the ownership or management of the undertaking in which he is employed from the employer in relation to that undertaking to a new employer, shall be deemed to be compensation received at the time of his retrenchment if—

(i) the service of the workman has been interrupted by such transfer; or

(ii) the terms and conditions of service applicable to the workman after such transfer are in any way less favourable to the workman than those applicable to him immediately before the transfer; or

(iii) the new employer is, under the terms of such transfer or otherwise, legally not liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer;

(c) the expressions "employer" and "workman" shall have the same meanings as in the Industrial Disputes Act, 1947 (14 of 1947);

(10BB) any payments made under the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 (21 of 1985), and any scheme framed thereunder except payment

made to any assessee in connection with the Bhopal gas leak disaster to the extent such assessee has been allowed a deduction under this Act on account of any loss or damage caused to him by such disaster;

(10BC) any amount received or receivable from the Central Government or a State Government or a local authority by an individual or his legal heir by way of compensation on account of any disaster, except the amount received or receivable to the extent such individual or his legal heir has been allowed a deduction under this Act on account of any loss or damage caused by such disaster.

Explanation.—For the purposes of this clause, the expression "disaster" shall have the meaning assigned to it under clause (d) of section 2 of the Disaster Management Act, 2005 (53 of 2005);

(10C) any amount received or receivable by an employee of—

(i) a public sector company; or

(ii) any other company; or

(iii) an authority established under a Central, State or Provincial Act; or

(iv) a local authority; or

(v) a co-operative society; or

(vi) a University established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a University under section 3 of the University Grants Commission Act, 1956 (3 of 1956); or

(vii) an Indian Institute of Technology within the meaning of clause (g) of section 3 of the Institutes of Technology Act, 1961 (59 of 1961); or

(viia) any State Government; or

(viib) the Central Government; or

(viic) an institution, having importance throughout India or in any State or States, as the Central Government may, by notification in the Official Gazette, specify in this behalf; or

(viii) such institute of management as the Central Government may, by notification in the Official Gazette,specify in this behalf,

on his voluntary retirement or termination of his service in accordance with any scheme or schemes of voluntary retirement or in the case of a public sector company referred to in sub-clause (i), a scheme of voluntary separation, to the extent such amount does not exceed five lakh rupees:

Provided that the schemes of the said companies or authorities or societies or Universities or the Institutes referred to in sub-clauses (vii) and (viii), as the case may be, governing the payment of such amount are framed in accordance with such guidelines (including, *inter alia*, criteria of economic viability) as may be prescribed:

Provided further that where exemption has been allowed to an employee under this clause for any assessment year, no exemption thereunder shall be allowed to him in relation to any other assessment year:

Provided also that where any relief has been allowed to an assessee under section 89 for any assessment year in respect of any amount received or receivable on his voluntary retirement or termination of service or voluntary separation, no exemption under this clause shall be allowed to him in relation to such, or any other, assessment year;

(10CC) in the case of an employee, being an individual deriving income in the nature of a perquisite, not provided for by way of monetary payment within the meaning of clause (2) of section 17, the tax on such income actually paid by his employer, at the option of the employer, on behalf of such employee,

notwithstanding anything contained in section 200 of the Companies Act, 1956 (1 of 1956);

(10D) any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy, other than—

(a) any sum received under sub-section (3) of section 80DD or sub-section (3) of section 80DDA; or

(b) any sum received under a Keyman insurance policy; or

(c) any sum received under an insurance policy issued on or after the 1st day of April, 2003 but on or before the 31st day of March, 2012, in respect of which the premium payable for any of the years during the term of the policy exceeds twenty per cent. of the actual capital sum assured; or

(d) any sum received under an insurance policy issued on or after the 1st day of April, 2012 in respect of which the premium payable for any of the years during the term of the policy exceeds ten per cent. of the actual capital sum assured:

Provided that the provisions of sub-clauses (c) and (d) shall not apply to any sum received on the death of a person:

Provided further that for the purpose of calculating the actual capital sum assured under sub-clause (c), effect shall be given to the *Explanation* to sub-section (3) of section 80C or the *Explanation* to sub-section (2A) of section 88, as the case may be:

Provided also that where the policy, issued on or after the 1st day of April, 2013, is for insurance on life of any person, who is—

(i) a person with disability or a person with severe disability as referred to in section 80U; or

(ii) suffering from disease or ailment as specified in the rules made under section 80DDB,

the provisions of this sub-clause shall have effect as if for the words "ten per cent.", the words "fifteen per cent." had been substituted.

Explanation 1.—For the purposes of this clause, "Keyman insurance policy" means a life insurance policy taken by a person on the life of another person who is or was the employee of the first-mentioned person or is or was connected in any manner whatsoever with the business of the first-mentioned person and includes such policy which has been assigned to a person, at any time during the term of the policy, with or without any consideration;

Explanation 2.—For the purposes of sub-clause (d), the expression "actual capital sum assured" shall have the meaning assigned to it in the *Explanation* to sub-section (3A) of section 80C;

(11) any payment from a provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies or from any other provident fund set up by the Central Government and notified by it in this behalf in the Official Gazette;

(12) the accumulated balance due and becoming payable to an employee participating in a recognised provident fund, to the extent provided in rule 8 of Part A of the Fourth Schedule;

(13) any payment from an approved superannuation fund made—

(i) on the death of a beneficiary; or

(ii) to an employee in lieu of or in commutation of an annuity on his retirement at or after a specified age or on his becoming incapacitated prior to such retirement; or

(iii) by way of refund of contributions on the death of a beneficiary; or

(iv) by way of refund of contributions to an employee on his leaving the service in connection with which the fund is established otherwise than by retirement at or after a specified age or on his becoming incapacitated prior to such retirement, to the extent to which such payment does not exceed the contributions made prior to the commencement of this Act and any interest thereon;

(13A) any special allowance specifically granted to an assessee by his employer to meet expenditure actually incurred on payment of rent (by whatever name called) in respect of residential accommodation occupied by the assessee, to such extent as may be prescribed having regard to the area or place in which such accommodation is situate and other relevant considerations:

Explanation.—For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply in a case where—

(a) the residential accommodation occupied by the assessee is owned by him; or

(b) the assessee has not actually incurred expenditure on payment of rent by whatever name called in respect of the residential accommodation occupied by him;

(14) (i) any such special allowance or benefit, not being in the nature of a perquisite within the meaning of clause (2) of section 17, specifically granted 'to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit, as may be prescribed, to the extent to which such expenses are actually incurred for that purpose;

(ii) any such allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at the place where he ordinarily resides, or to compensate him for the increased cost of living, as may be prescribed and to the extent as may be prescribed:

Provided that nothing in sub-clause (ii) shall apply to any allowance in the nature of personal allowance granted to the assessee to remunerate or compensate him for performing duties of a special nature relating to his office or employment unless such allowance is related to the place of his posting or residence;

(15)(i) income by way of interest, premium on redemption or other payment on such securities, bonds, annuity certificates, saving certificates, other certificates issued by the Central Government and deposits as the Central Government may, by notification in the Official Gazette, specify in this behalf, subject to such conditions and limits as may be specified in the said notification;

(iib) in the case of an individual or a Hindu undivided family, interest on such Capital Investment Bonds as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government shall not specify, for the purposes of this sub-clause, such Capital Investment Bonds on or after the 1st day of June, 2002;

(iic) in the case of an individual or a Hindu undivided family, interest on such Relief Bonds as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(iid) interest on such bonds, as the Central Government may, by notification in the Official Gazette, specify, arising to—

(a) a non-resident Indian, being an individual owning the bonds; or

(b) any individual owning the bonds by virtue of being a nominee or survivor of the non-resident Indian; or

(c) any individual to whom the bonds have been gifted by the non-resident Indian:

Provided that the aforesaid bonds are purchased by a non-resident Indian in foreign exchange and the interest and principal received in respect of such bonds, whether on their maturity or otherwise, is not allowable to be taken out of India:

Provided further that where an individual, who is a non-resident Indian in any previous year in which the bonds are acquired, becomes a resident in India in any subsequent year, the provisions of this sub-clause shall continue to apply in relation to such individual:

Provided also that in a case where the bonds are encashed in a previous year prior to their maturity by an individual who is so entitled, the provisions of this sub-clause shall not apply to such individual in relation to the assessment year relevant to such previous year:

Provided also that the Central Government shall not specify, for the purposes of this sub-clause, such bonds on or after the 1st day of June, 2002.

Explanation.—For the purposes of this sub-clause, the expression "non-resident Indian" shall have the meaning assigned to it in clause (e) of section 115C;

(iii) interest on securities held by the Issue Department of the Central Bank of Ceylon constituted under the Ceylon Monetary Law Act, 1949;

(iiia) interest payable to any bank incorporated in a country outside India and authorised to perform central banking functions in that country on any deposits made by it, with the approval of the Reserve Bank of India, with any scheduled bank:

Explanation.—For the purposes of this sub-clause, "scheduled bank" shall have the meaning assigned to it in clause (ii) of the *Explanation* to clause (viia) of sub-section (1) of section 36;

(iiib) interest payable to the Nordic Investment Bank, being a multilateral financial institution constituted by the Governments of Denmark, Finland, Iceland, Norway and Sweden, on a loan advanced by it to a project approved by the Central Government in terms of the memorandum of understanding entered into by the Central Government with that Bank on the 25th day of November, 1986;

(iiic) interest payable to the European Investment Bank, on a loan granted by it in pursuance of the framework-agreement for financial co-operation entered into on the 25th day of November, 1993 by the Central Government with that Bank;

(iv) interest payable—

(a) by Government or a local authority on moneys borrowed by it before the 1st day of June, 2001 from, or debts owed by it before the 1st day of June, 2001 to, sources outside India;

(b) by an industrial undertaking in India on moneys borrowed by it under a loan agreement entered into before the 1st day of June, 2001 with any such financial institution in a foreign country as may be approved in this behalf by the Central Government by general or special order;

(c) by an industrial undertaking in India on any moneys borrowed or debt incurred by it before the 1st day of June, 2001 in a foreign country in respect of the purchase outside India of raw materials or components or capital plant and machinery, to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan or debt and its repayment:

Explanation 1.—For the purposes of this item, "purchase of capital plant and machinery" includes the purchase of such capital plant and machinery under a hire-purchase agreement or a lease agreement with an option to purchase such plant and machinery;

Explanation 2.—For the removal of doubts, it is hereby declared that the usance interest payable outside India by an undertaking engaged in the business of ship-breaking in respect of purchase of a ship from outside India shall be deemed to be the interest payable on a debt incurred in a foreign country in respect of the purchase outside India;

(d) by the Industrial Finance Corporation of India established by the Industrial Finance Corporation Act, 1948 (15 of 1948), or the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964),or the Export-Import Bank of India established under the Export-Import Bank of India Act, 1981 (28 of 1981), or the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987), or the Small Industries Development Bank of India established under section 3 of the Small Industries Development Bank of India Act, 1989 (39 of 1989), or the Industrial Credit and Investment Corporation of India (a company formed and registered under the Indian Companies Act, 1913 (7 of 1913)), on any moneys borrowed by it from sources outside India before the 1st day of June, 2001, to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan and its repayment;

(e) by any other financial institution established in India or a banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act), on any moneys borrowed by it from sources outside India before the 1st day of June, 2001 under a loan agreement approved by the Central Government where the moneys are borrowed either for the purpose of advancing loans to industrial undertakings in India for purchase outside India of raw materials or capital plant and machinery or for the purpose of importing any goods which the Central Government may consider necessary to import in the public interest, to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan and its repayment;

(f) by an industrial undertaking in India on any moneys borrowed by it in foreign currency from sources outside India undera loan agreement approved by the Central Government before the 1st day of June, 2001 having regard to the need for industrial development in India, to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan and its repayment;

Explanation.—For the purpose of this item, the expression "foreign currency" shall have the meaning assigned to it in the Foreign Exchange Management Act, 1999 (42 of 1999);

(fa) by a scheduled bank, to a non-resident or to a person who is not ordinarily resident within the meaning of sub-section (6) of section 6, on deposits in foreign currency where the acceptance of such deposits by the bank is approved by the Reserve Bank of India:

Explanation.—For the purposes of this item, the expression "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934), but does not include a co-operative bank;

(g) by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes, being a company eligible for deduction under clause (viii) of sub-section (1) of section 36 on any moneys borrowed by it in foreign currency from sources outside India under a loan agreement approved by the Central Government before the 1st day of June, 2003, to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan and its repayment:

Explanation.—For the purposes of items (f), (fa) and (g), the expression "foreign currency" shall have the meaning assigned to it in the Foreign Exchange Management Act, 1999 (42 of 1999);

(h) by any public sector company in respect of such bonds or debentures and subject to such conditions, including the condition that the holder of such bonds or debentures registers his name and the holding with that company, as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(i) by Government on deposits made by an employee of the Central Government or a State Government or a public sector company, in accordance with such scheme as the Central Government may, by notification in the Official Gazette, frame in this behalf, out of the moneys due to him on account of his retirement, whether on superannuation or otherwise;

Explanation 1.—For the purposes of this sub-clause, the expression "industrial undertaking" means any undertaking which is engaged in—

(a) the manufacture or processing of goods; or

(aa) the manufacture of computer software or recording of programme on any disc, tape, perforated media or other information device; or

(b) the business of generation or distribution of electricity or any other form of power; or

(ba) the business of providing telecommunication services.; or

(c) mining; or

(d) the construction of ships; or

(da) the business of ship-breaking; or

(e) the operation of ships or aircrafts or construction or operation of rail systems;

Explanation 1A.—For the purposes of this sub-clause, the expression "interest" shall not include interest paid on delayed payment of loan or on default if it is in excess of two per cent. per annum over the rate of interest payable in terms of such loan.

Explanation 2.—For the purposes of this clause, the expression "interest" includes hedging transaction charges on account of currency fluctuation;

(v) interest on—

(a) securities held by the Welfare Commissioner, Bhopal Gas Victims, Bhopal, in the Reserve Bank's SGL Account No. SL/DH 048;

(b) deposits for the benefit of the victims of the Bhopal gas leak disaster held in such account, with the Reserve Bank of India or with a public sector bank, as the Central Government may, by notification in the Official Gazette specify, whether prospectively or retrospectively, but in no case earlier than the 1st day of April, 1994, in this behalf.

Explanation.—For the purposes of this sub-clause, the expression "public sector bank" shall have the meaning assigned to it in the *Explanation* to clause (23D);

(vi) interest on Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999, notified by the Central Government;

(vii) interest on bonds—

(a) issued by a local authority or by a State Pooled Finance Entity; and

(b) specified by the Central Government by notification in the Official Gazette.

Explanation.—For the purposes of this sub-clause, the expression "State Pooled Finance Entity" shall mean such entity which is set up in accordance with the guidelines for the Pooled Finance Development Scheme notified by the Central Government in the Ministry of Urban Development;

(viii) any income by way of interest received by a non-resident or a person who is not ordinarily resident, in India on a deposit made on or after the 1st day of April, 2005, in an Offshore Banking Unit referred to in clause (u) of section 2 of the Special Economic Zones Act, 2005

(15A) any payment made, by an Indian company engaged in the business of operation of aircraft, to acquire an aircraft or an aircraft engine (other than a payment for providing spares, facilities or services in connection with the operation of leased aircraft) on lease from the Government of a foreign State or a foreign enterprise under an agreement, not being an agreement entered into between the 1st day of, April, 1997, and the 31st day of March, 1999, and approved by the Central Government in this behalf:

Provided that nothing contained in this clause shall apply to any such agreement entered into on or after the 1st day of April, 2007.

Explanation.—For the purposes of this clause, the expression "foreign enterprise" means a person who is a non-resident;

(16) scholarships granted to meet the cost of education;

(17) any income by way of—

(i) daily allowance received by any person by reason of his membership of Parliament or of any State Legislature or of any Committee thereof;

(ii) any allowance received by any person by reason of his membership of Parliament under the Members of Parliament (Constituency Allowance) Rules, 1986;

(iii) any constituency allowance received by any person by reason of his membership of any State Legislature under any Act or rules made by that State Legislature;

(17A) any payment made, whether in cash or in kind,—

(i) in pursuance of any award instituted in the public interest by the Central Government or any State Government or instituted by any other body and approved by the Central Government in this behalf; or

(ii) as a reward by the Central Government or any State Government for such purposes as may be approved by the Central Government in this behalf in the public interest;

(18) any income by way of—

(i) pension received by an individual who has been in the service of the Central or State Government and has been awarded "Param Vir Chakra" or "Maha Vir Chakra" or "Vir Chakra" or such other gallantry award as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(ii) family pension received by any member of the family of an individual referred to in sub-clause (i):

Explanation.—For the purposes of this clause, the expression "family" shall have the meaning assigned to it in the *Explanation* to clause (5);

(19) family pension received by the widow or children or nominated heirs, as the case may be, of a member of the armed forces (including para-military forces) of the Union, where the death of such member has occurred in the course of operational duties, in such circumstances and subject to such conditions, as may be prescribed;

(19A) the annual value of any one palace in the occupation of a Ruler, being a palace, the annual value whereof was exempt from income-tax before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, by virtue of the provisions of the Merged States (Taxation Concessions) Order, 1949, or the Part B States (Taxation Concessions) Order, 1950, or, as the case may be, the Jammu and Kashmir (Taxation Concessions) Order, 1958:

Provided that for the assessment year commencing on the 1st day of April, 1972, the annual value of every such palace in the occupation of such Ruler during the relevant previous year shall be exempt from income-tax;

(20) the income of a local authority which is chargeable under the head "Income from house property", "Capital gains", or "Income from other sources" or from a trade or business carried on by it which accrues or arises from the supply of a commodity or service (not being water or electricity) within its own jurisdictional area or from the supply of water or electricity within or outside its own jurisdictional area;

Explanation.—For the purposes of this clause, the expression "local authority" means—

(i) Panchayat as referred to in clause (d) of article 243 of the Constitution; or

(ii) Municipality as referred to in clause (e) of article 243P of the Constitution; or

(iii) Municipal Committee and District Board,

legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local fund; or

(iv) Cantonment Board as defined in section 3 of the Cantonments Act, 1924 (2 of 1924);

(21) any income of a research association for the time being approved for the purpose of clause (ii) or clause (iii) of sub-section (1) of section 35:

Provided that the research association,—

(a) applies its income or accumulates it for application, wholly and exclusively to the objects for which it is established, and the provisions of sub-section (2) and sub-section (3) of section 11 shall apply in relation to such accumulation subject to the following modifications, namely:—

(i) in sub-section (2),—

(1) the words, brackets, letters and figure "referred to in clause (a) or clause (b) of sub-section (1) read with the *Explanation* to that sub-section" shall be omitted;

(2) for the words "to charitable or religious purposes", the words "for the purposes of scientific research or research in social science or statistical research" shall be substituted;

(3) the reference to "Assessing Officer" in clause (a) thereof shall be construed as a reference to the "prescribed authority" referred to in clause (ii) or clause (iii) of sub-section (1) of section 35;

(ii) in sub-section (3), in clause (a), for the words "charitable or religious purposes", the words "the purposes of scientific research or research in social science or statistical research" shall be substituted; and

(b) does not invest or deposit its funds, other than—

(i) any assets held by the research association where such assets form part of the corpus of the fund of the association as on the 1st day of June, 1973;

(ii) any assets (being debentures issued by, or on behalf of, any company or corporation), acquired by the research association before the 1st day of March, 1983;

(iii) any accretion to the shares, forming part of the corpus of the fund mentioned in sub-clause (i), by way of bonus shares allotted to the research association;

(iv) voluntary contributions received and maintained in the form of jewellery, furniture or any other article as the Board may, by notification in the Official Gazette, specify,

for any period during the previous year otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11:

Provided further that the exemption under this clause shall not be denied in relation to voluntary contribution, other than voluntary contribution in cash or voluntary contribution of the nature referred to in clause (b) of the first proviso to this clause, subject to the condition that such voluntary contribution is not held by the research association, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11, after the expiry

of one year from the end of the previous year in which such asset is acquired or the 31st day of March, 1992, whichever is later:

Provided also that nothing contained in this clause shall apply in relation to any income of the research association, being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business:

Provided also that where the research association is approved by the Central Government and subsequently that Government is satisfied that—

(i) the research association has not applied its income in accordance with the provisions contained in clause (a) of the first proviso; or

(ii) the research association has not invested or deposited its funds in accordance with the provisions contained in clause (b) of the first proviso; or

(iii) the activities of the research association are not genuine; or

(iv) the activities of the research association are not being carried out in accordance with all or any of the conditions subject to which such association was approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned association, by order, withdraw the approval and forward a copy of the order withdrawing the approval to such association and to the Assessing Officer;

(22B) any income of such news agency set up in India solely for collection and distribution of news as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the news agency applies its income or accumulates it for application solely for collection and distribution of news and does not distribute its income in any manner to its members:

Provided further that any notification issued by the Central Government under this clause shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification;

Provided also that where the news agency has been specified, by notification, by the Central Government and subsequently that Government is satisfied that such news agency has not applied or accumulated or distributed its income in accordance with the provisions contained in the first proviso, it may, at any time after giving a reasonable opportunity of showing cause, rescind the notification and forward a copy of the order rescinding the notification to such agency and to the Assessing Officer;

(23A) any income (other than income chargeable under the head Income from house property" or any income received for rendering any specific services or income by way of interest or dividends derived from its investments) of an association or institution established in India having as its object the control, supervision, regulation or encouragement of the profession of law, medicine, accountancy, engineering or architecture or such other profession as the Central Government may specify in this behalf, from time to time, by notification in the Official Gazette:

Provided that—

(i) the association or institution applies its income, or accumulates it for application, solely to the objects for which it is established; and

(ii) the association or institution is for the time being approved for the purpose of this clause by the Central Government by general or special order:

Provided further that where the association or institution has been approved by the Central Government and subsequently that Government is satisfied that—

(i) such association or institution has not applied or accumulated its income in accordance with the provisions contained in the first proviso; or

(ii) the activities of the association or institution are not being carried out in accordance with all or any of the conditions subject to which such association or institution was approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned association or institution, by order, withdraw the approval and forward a copy of the order withdrawing the approval to such association or institution and to the Assessing Officer;

(23AA) any income received by any person on behalf of any Regimental Fund or Non-Public Fund established by the Armed Forces of the Union for the welfare of the past and present members of such Forces or their dependants;

(23AAA) any income received by any person on behalf of a fund established, for such purposes as may be notified by the Board in the Official Gazette, for the welfare of employees or their dependants and of which fund such employees are members if such fund fulfils the following conditions, namely:—

(a) the fund—

(i) applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established; and

(ii) invests its funds and contributions and other sums received by it in the forms or modes specified in sub-section (5) of section 11;

(b) the fund is approved by the Commissioner in accordance with the rules made in this behalf.

Provided that any such approval shall at any one time have effect for such assessment year or years not exceeding three assessment years as may be specified in the order of approval;

(23AAB) any income of a fund, by whatever name called, set up by the Life Insurance Corporation of India on or after the 1st day of August, 1996, or any other insurer under a pension scheme,—

(i) to which contribution is made by any person for the purpose of receiving pension from such fund;

(ii) which is approved by the Controller of Insurance or the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), as the case may be.

Explanation.—For the purposes of this clause, the expression "Controller of Insurance" shall have the meaning assigned to it in clause (5B) of section 2 of the Insurance Act, 1938 (4 of 1938);

(23B) any income of an institution constituted as a public charitable trust or registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act, in force in any part of India, and existing solely for the development of khadi or village industries or both, and not for purposes of profit, to the extent such income is attributable to the business of production, sale, or marketing, of khadi or products of village industries:

Provided that:

(i) the institution applies its income, or accumulates it for application solely for the development of khadi or village industries or both; and

(ii) the institution is, for the time being, approved for the purpose of this clause by the Khadi and Village Industries Commission:

Provided further that the Commission shall not, at any one time, grant such approval for more than three assessment years beginning with the assessment year next following the financial year in which it is granted:

Provided also that where the institution has been approved by the Khadi and Village Industries Commission and subsequently that Commission is satisfied that—

(i) the institution has not applied or accumulated its income in accordance with the provisions contained in the first proviso; or

(ii) the activities of the institution are not being carried out in accordance with all or any of the conditions subject to which such institution was approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned institution, by order, withdraw the approval and forward a copy of the order withdrawing the approval to such institution and to the Assessing Officer.

Explanation.—For the purposes of this clause,—

(i) "Khadi and Village Industries Commission" means the Khadi and Village Industries Commission established under the Khadi and Village Industries Commission Act, 1956 (61 of 1956);

(ii) "khadi" and "village industries" have the meanings respectively assigned to them in that Act;

(23BB) any income of an authority (whether known as the Khadi and Village Industries Board or by any other name) established in a State by or under a State or Provincial Act for the development of khadi or village industries in the State.

Explanation.—For the purposes of this clause, "khadi" and "village industries" have the meanings respectively assigned to them in the Khadi and Village Industries Commission Act, 1956 (61 of 1956);

(23BBA) any income of any body or authority (whether or not a body corporate or corporation sole) established, constituted or appointed by or under any Central, State or Provincial Act which provides for the administration of any one or more of the following, that is to say, public religious or charitable trusts or endowments (including maths, temples, gurdwaras, wakfs, churches, synagogues, agiaries or other places of public religious worship) or societies for religious or charitable purposes registered as such under the Societies Registration Act, 1860 (21 of 1860), or any other law for the time being in force:

Provided that nothing in this clause shall be construed to exempt from tax the income of any trust, endowment or society referred to therein;

(23BBB) any income of the European Economic Community derived in India by way of interest, dividends or capital gains from investments made out of its funds under such scheme as the Central Government may, by notification in the Official Gazette, specify in this behalf—

Explanation.—For the purposes of this clause, "European Economic Community" means the European Economic Community established by the Treaty of Rome of 25th March, 1957;

(23BBC) any income of the SAARC Fund for Regional Projects set up by the Colombo Declaration issued on the 21st day of December, 1991, by the Heads of State or Government of the Member Countries of the South Asian Association for Regional Co-operation established on the 8th day of December, 1985, by the Charter of the South Asian Association for Regional Co-operation;

(23BBD) any income of the Secretariat of the Asian Organisation of the Supreme Audit Institutions registered as "ASOSAI-SECRETARIAT" under the Societies Registration Act, 1860 (21 of 1860), for ten previous years relevant to the assessment years beginning on the 1st day of April, 2001 and ending on the 31st day of March, 2011;

(23BBE) any income of the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);

(23BBF) any income of the North-Eastern Development Finance Corporation Limited, being a company formed and registered under the Companies Act, 1956:

Provided that in computing the total income of the North-Eastern Development Finance Corporation Limited, the amount to the extent of—

(i) twenty per cent. of the total income for assessment year beginning on the 1st day of April, 2006;

(ii) forty per cent. of the total income for assessment year beginning on the 1st day of April, 2007;

(iii) sixty per cent. of the total income for assessment year beginning on the 1st day of April, 2008;

(iv) eighty per cent. of the total income for assessment year beginning on the 1st day of April, 2009;

(v) one hundred per cent. of the total income for assessment year beginning on the 1st day of April, 2010 and any subsequent assessment year or years,

shall be included in such total income;

(23BBG) any income of the Central Electricity Regulatory Commission constituted under subsection (1) of section 76 of the Electricity Act, 2003 (36 of 2003);

(23BBH) any income of the Prasar Bharati (Broadcasting Corporation of India) established under sub-section (1) of section 3 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (25 of 1990);

(23C) any income received by any person on behalf of—

(i) the Prime Minister's National Relief Fund; or

(ii) the Prime Minister's Fund (Promotion of Folk Art); or

(iii) the Prime Minister's Aid to Students Fund; or

(iiia) the National Foundation for Communal Harmony; or

(iiiab) any university or other educational institution existing solely for educational purposes and not for purposes of profit, and which is wholly or substantially financed by the Government; or

(iiiac) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, and which is wholly or substantially financed by the Government; or

Explanation.—For the purposes of sub-clauses (iiiab) and (iiiac), any university or other educational institution, hospital or other institution referred therein, shall be considered as being substantially financed by the Government for any previous year, if the Government grant to such university or other educational

institution, hospital or other institution exceeds such percentage of the total receipts including any voluntary contributions, as may be prescribed, of such university or other educational institution, hospital or other institution, as the case may be, during the relevant previous year.;

(iiiad) any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed; or

(iiiae) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, if the aggregate annual receipts of such hospital or institution do not exceed the amount of annual receipts as may be prescribed; or

(iv) any other fund or institution established for charitable purposes which may be approved by the prescribed authority, having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States; or

(v) any trust (including any other legal obligation) or institution wholly for public religious purposes or wholly for public religious and charitable purposes, which may be approved by the prescribed authority, having regard to the manner in which the affairs of the trust or institution are administered and supervised for ensuring that the income accruing thereto is properly applied for the objects thereof; or

(vi) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority; or

(via) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiac) or sub-clause (iiiae) and which may be approved by the prescribed authority:

Provided that the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall make an application in the prescribed form and manner to the prescribed authority for the purpose of grant of the exemption, or continuance thereof, under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via):

Provided further that the prescribed authority, before approving any fund or trust or institution or any university or other educational institution or any hospital or other medical institution, under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), may call for such documents (including audited annual accounts) or information from the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, as it thinks necessary in order to satisfy itself about the genuineness of the activities of such fund or trust or institution or any university or other educational institution or any hospital or other medical

institution, as the case may be, and the prescribed authority may also make such inquiries as it deems necessary in this behalf:

Provided also that the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via)—

(a) applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established and in a case where more than fifteen per cent. of its income is accumulated on or after the 1st day of April, 2002, the period of the accumulation of the amount exceeding fifteen per cent. of its income shall in no case exceed five years; and

(b) does not invest or deposit its funds, other than—

(i) any assets held by the fund, trust or institution or any university or other educational institution or any hospital or other medical institution where such assets form part of the corpus of the fund, trust or institution or any university or other educational institution or any hospital or other medical institution as on the 1st day of June, 1973;

(ia) any asset, being equity shares of a public company, held by any university or other educational institution or any hospital or other medical institution where such assets form part of the corpus of any university or other educational institution or any hospital or other medical institution as on the 1st day of June, 1998;

(ii) any assets (being debentures issued by, or on behalf of, any company or corporation), acquired by the fund, trust or institution or any university or other educational institution or any hospital or other medical institution before the 1st day of March, 1983;

(iii) any accretion to the shares, forming part of the corpus mentioned in sub-clause (i) and sub-clause (ia), by way of bonus shares allotted to the fund, trust or institution or any university or other educational institution or any hospital or other medical institution;

(iv) voluntary contributions received and maintained in the form of jewellery, furniture or any other article as the Board may, by notification in the Official Gazette, specify,

for any period during the previous year otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11:

Provided also that the exemption under sub-clause (iv) or sub-clause (v) shall not be denied in relation to any funds invested or deposited before the 1st day of April, 1989, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 if such funds do not continue to remain so invested or deposited after the 30th day of March, 1993:

Provided also that the exemption under sub-clause (vi) or sub-clause (via) shall not be denied in relation to any funds invested or deposited before the 1st day of June, 1998, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 if such funds do not continue to remain so invested or deposited after the 30th day of March, 2001:

Provided also that the exemption under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall not be denied in relation to voluntary contribution, other than voluntary contribution in cash or voluntary contribution of the nature referred to in clause (b) of the third proviso to this sub-clause, subject to the condition that such voluntary contribution is not held by the trust or institution or any university or other educational institution or any hospital or other medical institution, otherwise than in any one or more of

the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, 1992, whichever is later:

Provided also that nothing contained in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall apply in relation to any income of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business:

Provided also that any notification issued by the Central Government under sub-clause (iv) or sub-clause (v), before the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President, shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification:

Provided also that where an application under the first proviso is made on or after the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President, every notification under sub-clause (iv) or sub-clause (v) shall be issued or approval under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall be granted or an order rejecting the application shall be passed within the period of twelve months from the end of the month in which such application was received:

Provided also that where the total income, of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), without giving effect to the provisions of the said sub-clauses, exceeds the maximum amount which is not chargeable to tax in any previous year, such trust or institution or any university or other educational institution or any hospital or other medical institution shall get its accounts audited in respect of that year by an accountant as defined in the *Explanation* below sub-section (2) of section 288 and furnish along with the return of income for the relevant assessment year, the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:

Provided also that any amount of donation received by the fund or institution in terms of clause (d) of sub-section (2) of section 80G in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (v) of sub-section (5C) of that section, in the manner specified in that clause, or which has been utilised for purposes other than providing relief to the victims of earth quake in Gujarat or which remains unutilised in terms of sub-section (5C) of section 80G and not transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, 2004, shall be deemed to be the income of the previous year and shall accordingly be charged to tax:

Provided also that where the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (vi) or sub-clause (via) does not apply its income during the year of receipt and accumulates it, any payment or credit out of such accumulation to any trust or institution registered under section 12AA or to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to

in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall not be treated as application of income to the objects for which such fund or trust or institution or university or educational institution or hospital or other medical institution, as the case may be, is established;

Provided also that where the fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) is notified by the Central Government or is approved by the prescribed authority, as the case may be, or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via), is approved by the prescribed authority and subsequently that Government or the prescribed authority is satisfied that—

(i) such fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not,—

(A) applied its income in accordance with the provisions contained in clause (a) of the third proviso; or

(B) invested or deposited its funds in accordance with the provisions contained in clause (b) of the third proviso; or

(ii) the activities of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution,—

(A) are not genuine; or

(B) are not being carried out in accordance with all or any of the conditions subject to which it was notified or approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed action to the concerned fund or institution or trust or any university or other educational institution or any hospital or other medical institution, rescind the notification or, by order, withdraw the approval, as the case may be, and forward a copy of the order rescinding the notification or withdrawing the approval to such fund or institution or trust or any university or other educational institution or any hospital or other medical institution and to the Assessing Officer:

Provided also that in case the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in the first proviso makes an application on or after the 1st day of June, 2006 for the purposes of grant of exemption or continuance thereof, such application shall be made on or before the 30th day of September of the relevant assessment year from which the exemption is sought:

Provided also that any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of the said section shall be included in the total income:

Provided also that all pending applications, on which no notification has been issued under sub-clause (iv) or sub-clause (v) before the 1st day of June, 2007, shall stand transferred on that day to the prescribed authority and the prescribed authority may proceed with such applications under those sub-clauses from the stage at which they were on that day;

Provided also that the income of a trust or institution referred to in sub-clause (iv) or sub-clause (v) shall be included in its total income of the previous year if the provisions of the first proviso to clause (15) of section 2 become applicable to such trust or institution in the said previous year, whether or not any approval granted or notification issued in respect of such trust or institution has been withdrawn or rescinded;

Provided also that where the fund or institution referred to in sub-clause (iv) or the trust or institution referred to in sub-clause (v) has been notified by the

Central Government or approved by the prescribed authority, as the case may be, or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via), has been approved by the prescribed authority, and the notification or the approval is in force for any previous year, then, nothing contained in any other provision of this section other than clause (1) thereof shall operate to exclude any income received on behalf of such fund or trust or institution or university or other educational institution or hospital or other medical institution, as the case may be, from the total income of the person in receipt thereof for that previous year.

Explanation.—In this clause, where any income is required to be applied or accumulated, then, for such purpose the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this clause in the same or any other previous year;

(23D) subject to the provisions of Chapter XIIE, any income of—

(i) a Mutual Fund registered under the Securities and Exchange Board of India Act, 1992 (15 of 1992), or regulations made thereunder;

(ii) such other Mutual Fund set up by a public sector bank or a public financial institution or authorised by the ReserveBank of India and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Explanation.—For the purposes of this clause,—

(a) the expression "public sector bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980) and a bank included in the category "other public sector banks" by the Reserve Bank of India;

(b) the expression "public financial institution" shall have the meaning assigned to it in section 4A of the Companies Act, 1956 (1 of 1956);

(c) the expression "Securities and Exchange Board of India" shall have the meaning assigned to it in clause (a) of sub-section (1) of section 2 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(23DA) any income of a securitisation trust from the activity of securitisation.

Explanation.—For the purposes of this clause,—

(a) "securitisation" shall have the same meaning as assigned to it,—

(i) in clause (r) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the Securities Contracts (Regulation) Act, 1956 (42 of 1956); or

(ii) under the guidelines on securitisation of standard assets issued by the Reserve Bank of India;

(b) "securitisation trust" shall have the meaning assigned to it in the *Explanation* below section 115TC;

(23EA) any income, by way of contributions received from recognised stock exchanges and the members thereof, of such Investor Protection Fund set up by recognised stock exchanges in India, either jointly or separately, as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that where any amount standing to the credit of the Fund and not charged to income-tax during any previous year is shared, either wholly or in part, with a recognised stock exchange, the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is so shared and shall accordingly be chargeable to income-tax;

(23EB) any income of the Credit Guarantee Fund Trust for Small Industries, being a trust created by the Government of India and the Small Industries Development Bank of India established under sub-section (1) of section 3 of the Small Industries Development Bank of India Act, 1989 (39 of 1989), for five previous years relevant to the assessment years beginning on the 1st day of April, 2002 and ending on the 31st day of March, 2007;

(23EC) any income, by way of contributions received from commodity exchanges and the members thereof, of such Investor Protection Fund set up by commodity exchanges in India, either jointly or separately, as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that where any amount standing to the credit of the said Fund and not charged to income-tax during any previous year is shared, either wholly or in part, with a commodity exchange, the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is so shared and shall accordingly be chargeable to income-tax.

Explanation.—For the purposes of this clause, "commodity exchange" shall mean a "registered association" as defined in clause (jj) of section 2 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952);

(23ED) any income, by way of contributions received from a depository, of such Investor Protection Fund set up in accordance with the regulations by a depository as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that where any amount standing to the credit of the Fund and not charged to income-tax during any previous year is shared, either wholly or in part with a depository, the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is so shared and shall, accordingly, be chargeable to income-tax.

Explanation.—For the purposes of this clause,—

(i) "depository" shall have the same meaning as assigned to it in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996);

(ii) "regulations" means the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the Depositories Act, 1996 (22 of 1996).

(23F) any income by way of dividends or long-term capital gains of a venture capital fund or a venture capital company from investments made by way of equity shares in a venture capital undertaking:

Provided that such venture capital fund or venture capital company is approved for the purposes of this clause by the prescribed authority in accordance with the rules made in this behalf and satisfies the prescribed conditions:

Provided further that any approval by the prescribed authority shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years, as may be specified in the order of approval:

Provided also that nothing contained in this clause shall apply in respect of any investment made after the 31st day of March, 1999;

Explanation.—For the purposes of this clause,—

(a) "venture capital fund" means such fund, operating under a trust deed registered under the provisions of the Registration Act, 1908 (16 of 1908),

established to raise monies by the trustees for investments mainly by way of acquiring equity shares of a venture capital undertaking in accordance with the prescribed guidelines;

(b) "venture capital company" means such company as has made investments by way of acquiring equity shares of venture capital undertakings in accordance with the prescribed guidelines; and

(c) "venture capital undertaking" means such domestic company whose shares are not listed in a recognised stock exchange in India and which is engaged in the business of generation or generation and distribution of electricity or any other form of power or engaged in the business of providing telecommunication services or in the business of developing, maintaining and operating any infrastructure facility or engaged in the manufacture or production of such articles or things (including computer software) as may be notified by the Central Government in this behalf;

(d) "infrastructure facility" means a road, highway, bridge, airport, port, rail system, a water supply project, irrigation project, sanitation and sewerage system or any other public facility of a similar nature as may be notified by the Board in this behalf in the Official Gazette and which fulfils the conditions specified in sub-section (4A) of section 80IA;

(23FA) any income by way of dividends, other than dividends referred to in section 115-O, or long-term capital gains of a venture capital fund or a venture capital company from investments made by way of equity shares in a venture capital undertaking:

Provided that such venture capital fund or venture capital company is approved, for the purposes of this clause, by the Central Government on an application made to it in accordance with the rules made in this behalf and which satisfies the prescribed conditions:

Provided further that any approval by the Central Government shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years, as may be specified in the order of approval:

Provided also that nothing contained in this clause shall apply in respect of any investment made after the 31st day of March, 2000:

Explanation.—For the purposes of this clause,—

(a) "venture capital fund" means such fund, operating under a trust deed registered under the provisions of the Registration Act, 1908 (16 of 1908), established to raise monies by the trustees for investments mainly by way of acquiring equity shares of a venture capital undertaking in accordance with the prescribed guidelines;

(b) "venture capital company" means such company as has made investments by way of acquiring equity shares of venture capital undertakings in accordance with the prescribed guidelines; and

(c) "venture capital undertaking" means such domestic company whose shares are not listed in a recognised stock exchange in India and which is engaged in the—

(i) business of—

(A) software;

(B) information technology;

(C) production of basic drugs in the pharmaceutical sector;

(D) bio-technology;

(E) agriculture and allied sectors; or

(F) such other sectors as may be notified by the Central Government in this behalf; or

(ii) production or manufacture of any article or substance for which patent has been granted to the National Research Laboratory or any other scientific research institution approved by the Department of Science and Technology;

(23FB) any income of a venture capital company or venture capital fund from investment in a venture capital undertaking.

Explanation.—For the purposes of this clause,—

(a) "venture capital company" means a company which—

(A) has been granted a certificate of registration, before the 21st day of May, 2012, as a Venture Capital Fund and is regulated under the Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 (hereinafter referred to as the Venture Capital Funds Regulations) made under the Securities and Exchange Board of India Act, 1992 (15 of 1992); or

(B) has been granted a certificate of registration as Venture Capital Fund as a sub-category of Category I Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 (hereinafter referred to as the Alternative Investment Funds Regulations) made under the Securities and Exchange Board of India Act, 1992 (15 of 1992), and which fulfils the following conditions, namely:—

(i) it is not listed on a recognised stock exchange;

(ii) it has invested not less than two-thirds of its investible funds in unlisted equity shares or equity linked instruments of venture capital undertaking; and

(iii) it has not invested in any venture capital undertaking in which its director or a substantial shareholder (being a beneficial owner of equity shares exceeding ten per cent. of its equity share capital) holds, either individually or collectively, equity shares in excess of fifteen per cent. of the paid-up equity share capital of such venture capital undertaking;

(b) "venture capital fund" means a fund—

(A) operating under a trust deed registered under the provisions of the Registration Act, 1908 (16 of 1908), which—

(I) has been granted a certificate of registration, before the 21st day of May, 2012, as a Venture Capital Fund and is regulated under the Venture Capital Funds Regulations; or

(II) has been granted a certificate of registration as Venture Capital Fund as a sub-category of Category I Alternative Investment Fund under the Alternative Investment Funds Regulations and which fulfils the following conditions, namely:—

(i) it has invested not less than two-thirds of its investible funds in unlisted equity shares or equity linked instruments of venture capital undertaking;

(ii) it has not invested in any venture capital undertaking in which its trustee or the settler holds, either individually or collectively, equity shares in excess of fifteen per cent. of the paid-up equity share capital of such venture capital undertaking; and

(iii) the units, if any, issued by it are not listed in any recognised stock exchange; or

(B) operating as a venture capital scheme made by the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);

(c) "venture capital undertaking" means—

(i) a venture capital undertaking as defined in clause (n) of regulation 2 of the Venture Capital Funds Regulations; or

(ii) a venture capital undertaking as defined in clause (aa) of sub-regulation (1) of regulation 2 of the Alternative Investment Funds Regulations;

(23FC) any income of a business trust by way of interest received or receivable from a special purpose vehicle.

Explanation.—For the purposes of this clause, the expression "special purpose vehicle" means an Indian company in which the business trust holds controlling interest and any specific percentage of shareholding or interest, as may be required by the regulations under which such trust is granted registration;

(23FD) any distributed income, referred to in section 115UA, received by a unit holder from the business trust, not being that proportion of the income which is of the same nature as the income referred to in clause (23FC);

(24) any income chargeable under the heads "Income from house property" and "Income from other sources" of—

(a) a registered union within the meaning of the Trade Unions Act, 1926 (16 of 1926), formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen;

(b) an association of registered unions referred to in sub-clause (a);

(25) (i) interest on securities which are held by, or are the property of, any provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies, and any capital gains of the fund arising from the sale, exchange or transfer of such securities;

(ii) any income received by the trustees on behalf of a recognised provident fund;

(iii) any income received by the trustees on behalf of an approved superannuation fund;

(iv) any income received by the trustees on behalf of an approved gratuity fund;

(v) any income received—

(a) by the Board of Trustees constituted under the Coal Mines Provident Funds and Miscellaneous Provisions Act, 1948 (46 of 1948), on behalf of the Deposit-linked Insurance Fund established under section 3G of that Act; or

(b) by the Board of Trustees constituted under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), on behalf of the Deposit-linked Insurance Fund established under section 6C of that Act;

(25A) any income of the Employees' State Insurance Fund set up under the provisions of the Employees' State Insurance Act, 1948 (34 of 1948);

(26) in the case of a member of a Scheduled Tribe as defined in clause (25) of article 366 of the Constitution, residing in any area specified in Part I or Part II of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution or in the States of Arunachal Pradesh, Manipur, Mizoram, Nagaland and Tripura or in the areas covered by Notification No. TAD/R/35/50/109, dated the 23rd February; 1951, issued by the Governor of Assam under the proviso to sub-paragraph (3) of the said paragraph 20 as it stood immediately before the

commencement of the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971) or in the Ladakh region of the State of Jammu and Kashmir, any income which accrues or arises to him,—

(a) from any source in the areas, or States aforesaid, or,

(b) by way of dividend or interest on securities;

(26A) any income accruing or arising to any person from any source in the district of Ladakh or outside India in any previous year relevant to any assessment year commencing before the 1st day of April, 1989, where such person is resident in the said district in that previous year:

Provided that this clause shall not apply in the case of any such person unless he was resident in that district in the previous year relevant to the assessment year commencing on the first day of April, 1962.

Explanation 1.—For the purposes of this clause a person shall be deemed to be resident in the district of Ladakh if he fulfils the requirements of sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) of section 6, as the case may be, subject to the modifications that—

(i) references in those sub-sections to India shall be construed as references to the said district; and

(ii) in clause (i) of sub-section (3), reference to Indian company shall be construed as reference to a company formed and registered under any law for the time being in force in the State of Jammu and Kashmir and having its registered office in that district in that year;

Explanation 2.—In this clause, references to the district of Ladakh shall be construed as references to the areas comprised in the said district on the 30th day of June, 1979;

(26AAA) in case of an individual, being a Sikkimese, any income which accrues or arises to him—

(a) from any source in the State of Sikkim; or

(b) by way of dividend or interest on securities:

Provided that nothing contained in this clause shall apply to a Sikkimese woman who, on or after the 1st day of April, 2008, marries an individual who is not a Sikkimese.

Explanation.—For the purposes of this clause, "Sikkimese" shall mean—

(i) an individual, whose name is recorded in the register maintained under the Sikkim Subjects Regulation, 1961 read with the Sikkim Subject Rules, 1961 (hereinafter referred to as the "Register of Sikkim Subjects"), immediately before the 26th day of April, 1975; or

(ii) an individual, whose name is included in the Register of Sikkim Subjects by virtue of the Government of India Order No. 26030/36/90-I.C.I., dated the 7th August, 1990 and Order of even number dated the 8th April, 1991; or

(iii) any other individual, whose name does not appear in the Register of Sikkim Subjects, but it is established beyond doubt that the name of such individual's father or husband or paternal grandfather or brother from the same father has been recorded in that register;

(26AAB) any income of an agricultural produce market committee or board constituted under any law for the time being in force for the purpose of regulating the marketing of agricultural produce;

(26B) any income of a corporation established by a Central, State or Provincial Act or of any other body, institution or association (being a body, institution or association wholly financed by Government) where such corporation or other

body or institution or association has been established or formed for promoting the interests of the members of the Scheduled Castes or the Scheduled Tribes or backward classes or of any two or all of them.

Explanation.—For the purposes of this clause,—

(a) "Scheduled Castes" and "Scheduled Tribes" shall have the meanings respectively assigned to them in clauses (24) and (25) of article 366 of the Constitution;

(b) "backward classes" means such classes of citizens, other than the Scheduled Castes and the Scheduled Tribes, as may be notified—

(i) by the Central Government; or

(ii) by any State Government,

as the case may be, from time to time;

(26BB) any income of a corporation established by the Central Government or any State Government for promoting the interests of the members of a minority community.

Explanation.—For the purposes of this clause, "minority community" means a community notified as such by the Central Government in the Official Gazette in this behalf;

(26BBB) any income of a corporation established by a Central, State or Provincial Act for the welfare and economic upliftment of ex-servicemen being the citizens of India.

Explanation.—For the purposes of this clause, "ex-serviceman" means a person who has served in any rank, whether as combatant or non-combatant, in the armed forces of the Union or armed forces of the Indian States before the commencement of the Constitution (but excluding the Assam Rifles, Defence Security Corps, General Reserve Engineering Force, Lok Sahayak Sena, Jammu and Kashmir Militia and Territorial Army) for a continuous period of not less than six months after attestation and has been released, otherwise than by way of dismissal or discharge on account of misconduct or inefficiency, and in the case of a deceased or incapacitated ex-serviceman includes his wife, children, father, mother, minor brother, widowed daughter and widowed sister, wholly dependant upon such ex-serviceman immediately before his death or incapacitation;

(27) any income of a co-operative society formed for promoting the interests of the members of either the Scheduled Castes or Scheduled Tribes or both referred to in clause (26B):

Provided that the membership of the co-operative society consists of only other co-operative societies formed for similar purposes and the finances of the society are provided by the Government and such other societies;

(29A) any income accruing or arising to—

(a) the Coffee Board constituted under section 4 of the Coffee Act, 1942 (7 of 1942), in any previous year relevant to any assessment year commencing on or after the 1st day of April, 1962, or the previous year in which such Board was constituted, whichever is later;

(b) the Rubber Board constituted under sub-section (1) of section 4 of the Rubber Board Act, 1947 (24 of 1947), in any previous year relevant to any assessment year commencing on or after the 1st day of April, 1962, or the previous year in which such Board was constituted, whichever is later;

(c) the Tea Board established under section 4 of the Tea Act, 1953 (29 of 1953), in any previous year relevant to any assessment year commencing on or after the 1st day of April, 1962, or the previous year in which such Board was constituted, whichever is later;

(d) the Tobacco Board constituted under the Tobacco Board Act, 1975 (4 of 1975), in any previous year relevant to any assessment year commencing on or after the 1st day of April, 1975, or the previous year in which such Board was constituted, whichever is later;

(e) the Marine Products Export Development Authority established under section 4 of the Marine Products Export Development Authority Act, 1972 (13 of 1972), in any previous year relevant to any assessment year commencing on or after the 1st day of April, 1972, or the previous year in which such Authority was constituted, whichever is later;

(f) the Agricultural and Processed Food Products Export Development Authority established under section 4 of the Agricultural and Processed Food Products Export Development Act, 1985 (2 of 1986), in any previous year relevant to any assessment year commencing on or after the 1st day of April, 1985, or the previous year in which such Authority was constituted, whichever is later;

(g) the Spices Board constituted under sub-section (1) of section 3 of the Spices Board Act, 1986 (10 of 1986), in any previous year relevant to any assessment year commencing on or after the 1st day of April, 1986, or the previous year in which such Board was constituted, whichever is later;

(h) the Coir Board established under section 4 of the Coir Industry Act, 1953 (45 of 1953);

(30) in the case of an assessee who carries on the business of growing and manufacturing tea in India, the amount of any subsidy received from or through the Tea Board under any such scheme for replantation or replacement of tea bushes or for rejuvenation or consolidation of areas used for cultivation of tea as the Central Government may, by notification in the Official Gazette specify:

Provided that the assessee furnishes to the Assessing Officer, along with his return of income tax for the assessment year concerned or within such further time as the Assessing Officer may allow, a certificate from the Tea Board as to the amount of such subsidy paid to the assessee during the previous year:

Explanation.—In this clause, "Tea Board" means the Tea Board established under section 4 of the Tea Act, 1953 (29 of 1953);

(31) in the case of an assessee who carries on the business of growing and manufacturing rubber, coffee, cardamom or such other commodity in India, as the Central Government may, by notification in the Official Gazette, specify in this behalf, the amount of any subsidy received from or through the concerned Board under any such scheme for replantation or replacement of rubber plants, coffee plants, cardamom plants or plants for the growing of such other commodity or for rejuvenation or consolidation of areas used for cultivation of rubber, coffee, cardamom or such other commodity as the Central Government may, by notification in the Official Gazette, specify:

Provided that the assessee furnishes to the Assessing Officer, along with his return of income for the assessment year concerned or within such further time as the Assessing Officer may allow, a certificate from the concerned Board, as to the amount of such subsidy paid to the assessee during the previous year;

Explanation.—In this clause, "concerned Board" means,—

(i) in relation to rubber, the Rubber Board constituted under section 4 of the Rubber Act, 1947 (24 of 1947),

(ii) in relation to coffee, the Coffee Board constituted under section 4 of the Coffee Act, 1942 (7 of 1942),

(iii) in relation to cardamom, the Spices Board constituted under section 3 of the Spices Board Act, 1986 (10 of 1986),

(iv) in relation to any other commodity specified under this clause, any Board or other authority established under any law for the time being in force which the Central Government may, by notification in the Official Gazette, specify in this behalf;

(32) in the case of an assessee referred to in sub-section (1A) of section 64, any income includible in his total income under that sub-section, to the extent such income does not exceed one thousand five hundred rupees in respect of each minor child whose income is so includible;

(33) any income arising from the transfer of a capital asset, being a unit of the Unit Scheme, 1964 referred to in Schedule I to the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002), and where the transfer of such asset takes place on or after the 1st day of April, 2002;

(34) any income by way of dividends referred to in section 115-O;

(34A) any income arising to an assessee, being a shareholder, on account of buy back of shares (not being listed on a recognised stock exchange) by the company as referred to in section 115QA;

(35) any income by way of,—

(a) income received in respect of the units of a Mutual Fund specified under clause (23D); or

(b) income received in respect of units from the Administrator of the specified undertaking; or

(c) income received in respect of units from the specified company:

Provided that this clause shall not apply to any income arising from transfer of units of the Administrator of the specified undertaking or of the specified company or of a mutual fund, as the case may be.

Explanation.—For the purposes of this clause,—

(a) 'Administrator" means the Administrator as referred to in clause (a) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002);

(b) "specified company" means a company as referred to in clause (h) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002);

(35A) any income by way of distributed income referred to in section 115TA received from a securitisation trust by any person being an investor of the said trust.

Explanation.—For the purposes of this clause, the expressions "investor" and "securitisation trust" shall have the meanings respectively assigned to them in the *Explanation* below section 115TC;

(36) any income arising from the transfer of a long-term capital asset, being an eligible equity share in a company purchased on or after the 1st day of March, 2003, and before the 1st day of March, 2004 and held for a period of twelve months or more.

Explanation.—For the purposes of this clause, "eligible equity share" means,—

(i) any equity share in a company being a constituent of BSE-500 Index of the Stock Exchange, Mumbai as on the 1st day of March, 2003 and the transactions of purchase and sale of such equity share are entered into on a recognised stock exchange in India;

(ii) any equity share in a company allotted through a public issue on or after the 1st day of March, 2003 and listed in a recognised stock exchange in

India before the 1st day of March, 2004 and the transaction of sale of such share is entered into on a recognised stock exchange in India;

(37) in the case of an assessee, being an individual or a Hindu undivided family, any income chargeable under the head "Capital gains" arising from the transfer of agricultural land, where—

(i) such land is situate in any area referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of section 2;

(ii) such land, during the period of two years immediately preceding the date of transfer, was being used for agricultural purposes by such Hindu undivided family or individual or a parent of his;

(iii) such transfer is by way of compulsory acquisition under any law, or a transfer the consideration for which is determined or approved by the Central Government or the Reserve Bank of India;

(iv) such income has arisen from the compensation or consideration for such transfer received by such assessee on or after the 1st day of April, 2004.

Explanation.—For the purposes of this clause, the expression "compensation or consideration" includes the compensation or consideration enhanced or further enhanced by any court, tribunal or other authority;

(38) any income arising from the transfer of a long-term capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust where—

(a) the transaction of sale of such equity share or unit is entered into on or after the date on which Chapter VII of the Finance (No. 2) Act, 2004 comes into force; and

(b) such transaction is chargeable to securities transaction tax under that Chapter:

Provided that the income by way of long-term capital gain of a company shall be taken into account in computing the book profit and income-tax payable under section 115JB.

Provided further that the provisions of this clause shall not apply in respect of any income arising from transfer of units of a business trust which were acquired in consideration of a transfer referred to in clause (xvii) of section 47.

Explanation.—For the purposes of this clause, "equity oriented fund" means a fund—

(i) where the investible funds are invested by way' of equity shares in domestic companies to the extent of more than sixty-five per cent. of the total proceeds of such fund; and

(ii) which has been set up tinder a scheme of a Mutual Fund specified under clause (23D):

Provided that the percentage of equity share holding of the fund shall be computed with reference to the annual average of the monthly averages of the opening and closing figures.

(39) any specified income, arising from any international sporting event held in India, to the person or persons notified by the Central Government in the Official Gazette, if such international sporting event—

(a) is approved by the international body regulating the international sport relating to such event;

(b) has participation by more than two countries;

(c) is notified by the Central Government in the Official Gazette for the purposes of this clause.

Explanation.—For the purposes of this clause, "the specified income" means the income, of the nature and to the extent, arising from the international sporting event, which the Central Government may notify in this behalf;

(40) any income of any subsidiary company by way of grant or otherwise received from an Indian company, being its holding company engaged in the business of generation or transmission or distribution of power if receipt of such income is for settlement of dues in connection with reconstruction or revival of an existing business of power generation:

Provided that the provisions of this clause shall apply if reconstruction or revival of any existing business of power generation is by way of transfer of such business to the Indian company notified under sub-clause (a) of clause (v) of sub-section (4) of section 80-IA;

(41) any income arising from transfer of a capital asset, being an asset of an undertaking engaged in the business of generation or transmission or distribution of power where such transfer is effected on or before the 31st day of March, 2006, to the Indian company notified under sub-clause (a) of clause (v) of sub-section (4) of section 80-IA.

(42) any specified income arising to a body or authority which—

(a) has been established or constituted or appointed under a treaty or an agreement entered into by the Central Government with two or more countries or a convention signed by the Central Government;

(b) is established or constituted or appointed not for the purposes of profit;

(c) is notified by the Central Government in the Official Gazette for the purposes of this clause.

Explanation.—For the purposes of this clause, "specified income" means the income, of the nature and to the extent, arising to the body or authority referred to in this clause, which the Central Government may notify in this behalf.

(43) any amount received by an individual as a loan, either in lump sum or in instalment, in a transaction of reverse mortgage referred to in clause (xvi) of section 47;

(44) any income received by any person for, or on behalf of, the New Pension System Trust established on the 27th day of February, 2008 under the provisions of the Indian Trusts Act, 1882 (2 of 1882).

(45) any allowance or perquisite, as may be notified by the Central Government in the Official Gazette in this behalf, paid to the Chairman or a retired Chairman or any other member or retired member of the Union Public Service Commission;

(46) any specified income arising to a body or authority or Board or Trust or Commission (by whatever name called) which—

(a) has been established or constituted by or under a Central, State or Provincial Act, or constituted by the Central Government or a State Government, with the object of regulating or administering any activity for the benefit of the general public;

(b) is not engaged in any commercial activity; and

(c) is notified by the Central Government in the Official Gazette for the purposes of this clause.

Explanation.—For the purposes of this clause, "specified income" means the income, of the nature and to the extent arising to a body or authority or Board or Trust or Commission (by whatever name called) referred to in this clause, which the Central Government may, by notification in the Official Gazette, specify in this behalf;

(47) any income of an infrastructure debt fund, set up in accordance with the guidelines as may be prescribed, which is notified by the Central Government in the Official Gazette for the purposes of this clause.

(48) any income received in India in Indian currency by a foreign company on account of sale of crude oil, any other goods or rendering of services, as may be notified by the Central Government in this behalf, to any person in India:

Provided that—

(i) receipt of such income in India by the foreign company is pursuant to an agreement or an arrangement entered into by the Central Government or approved by the Central Government;

(ii) having regard to the national interest, the foreign company and the agreement or arrangement are notified by the Central Government in this behalf; and

(iii) the foreign company is not engaged in any activity, other than receipt of such income, in India.

(49) any income of the National Financial Holdings Company Limited, being a company set up by the Central Government, of any previous year relevant to any assessment year commencing on or before the 1st day of April, 2014.

10BB. Meaning of computer programmes in certain cases.—The profits and gains derived by an undertaking from the production of computer programmes under section 10B, as it stood prior to its substitution by section 7 of the Finance Act, 2000 (10 of 2000), shall be construed as if for the words "computer programmes", the words "computer programmes or processing or management of electronic data" had been substituted in that section.

11. Income from property held for charitable or religious purposes.—(1) Subject to the provisions of sections, 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent. of the income from such property;

(b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of fifteen per cent. of the income from such property;

(c) income derived from property held under trust—

(i) created on or after the Ist day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and

(ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;

(d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution;

Explanation.—For the purposes of clauses (a) and (b),—

(1) in computing the fifteen per cent. of the income which may be accumulated or set apart, any such voluntary contributions as are referred to in section 12 shall be deemed to be part of the income;

(2) if, in the previous year, the income applied to charitable or religious purposes in India falls short of eighty-five per cent. of the income derived during that year from property held under trust, or, as the case may be, held under trust in part, by any amount—

(i) for the reason that the whole or any part of the income has not been received during that year, or

(ii) for any other reason,

then—

(a) in the case referred to in sub-clause (i), so much of the income applied to such purposes in India during the previous year in which the income is received or during the previous year immediately following as does not exceed the said amount; and

(b) in the case referred to in sub-clause (ii), so much of the income applied to such purposes in India during the previous year immediately following the previous year in which the income was derived as does not exceed the said amount,

may, at the option of the person in receipt of the income (such option to be exercised in writing before the expiry of the time allowed under sub-section (1) of section 139 for furnishing the return of income) be deemed to be income applied to such purposes, during the previous year in which the income was derived; and the income so deemed to have been applied shall not be taken into account in calculating the amount of income applied to such purposes in the case referred to in sub-clause (i), during the previous year in which the income is received or during the previous year immediately following, as the case may be, and, in the case referred to in sub-clause (ii), during the previous year immediately following the previous year in which the income was derived.

(1A) For the purposes of sub-section (1),—

(a) where a capital asset, being property held under trust wholly for charitable or religious purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:—

(i) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of such capital gain;

(ii) where only a part of the net consideration is utilised for acquiring the new capital asset, so much of such capital gain as is equal to the amount, if any, by which the amount so utilised exceeds the cost of the transferred asset;

(b) where a capital asset, being property held under trust in part only for such purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the appropriate fraction of the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:—

(i) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of the appropriate fraction of such capital gain;

(ii) in any other case, so much of the appropriate fraction of the capital gain as is equal to the amount, if any, by which the appropriate fraction of the amount utilised for acquiring the new asset exceeds the appropriate fraction of the cost of the transferred asset.

Explanation.—In this sub-section,—

(i) "appropriate fraction" means the fraction which represents the extent to which the income derived from the capital asset transferred was immediately before such transfer applicable to charitable or religious purposes;

(ii) "cost of the transferred asset" means the aggregate of the cost of acquisition (as ascertained for the purposes of sections 48 and 49) of the capital asset which is the subject of the transfer and the cost of any improvement thereto within the meaning assigned to that expression in sub-clause (b) of clause (1) of section 55;

(iii) "net consideration" means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(1B) Where any income in respect of which an option is exercised under clause (2) of the Explanation to sub-section (1) is not applied to charitable or religious purposes in India during the period referred to in sub-clause (a) or, as the case may be, sub-clause (b), of the said clause, then such income shall be deemed to be the income of the person in receipt thereof—

(a) in the case referred to in sub-clause (i) of the said clause, of the previous year immediately following the previous year in which the income was received, or

(b) in the case referred to in sub-clause (ii) of the said clause, of the previous year immediately following the previous year in which the income was derived.

(2) Where eighty-five per cent. of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:—

(a) such, person specifies, by notice in writing given to the Assessing Officer in the prescribed manner, the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years;

(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5):

Provided that in computing the period of ten years referred to in clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded:

Provided further that in respect of any income accumulated or set apart on or after the 1st day of April, 2001, the provisions of this sub-section shall have effect as if for the words "ten years" at both the places where they occur, the words "five years" had been substituted.

Explanation.—Any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (1), read with the Explanation to that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or

sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter.

(3) Any income referred to in sub-section (2) which—

(a) is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or

(b) ceases to remain invested or deposited in any of the forms or modes specified in sub-section (5), or

(c) is not utilised for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of that sub-section or in the year immediately following the expiry thereof,

(d) is credited or paid to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10,

shall be deemed to be the income of such person of the previous year in which it is so applied or ceases to be so accumulated or set apart or ceases to remain so invested or deposited or credited or paid or, as the case may be, of the previous year immediately following the expiry of the period aforesaid.

(3A) Notwithstanding anything contained in sub-section (3), where due to circumstances beyond the control of the person in receipt of the income, any income invested or deposited in accordance with the provisions of clause (b) of sub-section (2) cannot be applied for the purpose for which it was accumulated or set apart, the Assessing Officer may, on an application made to him in this behalf, allow such person to apply such income for such other charitable or religious purpose in India as is specified in the application by such person and as is in conformity with the objects of the trust; and thereupon the provisions of sub-section (3) shall apply as if the purpose specified by such person in the application under this sub-section were a purpose specified in the notice given to the Assessing Officer under clause (a) of sub-section (2):

Provided that the Assessing Officer shall not allow application of such income by way of payment or credit made for the purposes referred to in clause (d) of sub-section (3) of section 11:

Provided further that in case the trust or institution, which has invested or deposited its income in accordance with the provisions of clause (b) of sub-section (2), is dissolved, the Assessing Officer may allow application of such income for the purposes referred to in clause (d) of sub-section (3) in the year in which such trust or institution was dissolved.

(4) For the purposes of this section, "property held under trust" includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Assessing Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes .

(4A) Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.

(5) The forms and modes of investing or depositing the money referred to in clause (b) of sub-section (2) shall be the following, namely:—

(i) investment in savings certificates as defined in clause (c) of section 2 of the Government Saving Certificates Act, 1959 (46 of 1959), and any other securities or certificates issued by the Central Government under the Small Saving Schemes of that Government,

(ii) deposit in any account with the Post Office Savings Bank;

(iii) deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank).

Explanation.—In this clause, "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);

(iv) investment in units of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);

(v) investment in any security for money created and issued by the Central Government or a State Government;

(vi) investment in debentures issued by, or on behalf of, any company or corporation both the principal whereof and the interest whereon are fully and unconditionally guaranteed by the Central Government or by a State Government;

(vii) investment or deposit in any public sector company:

Provided that where an investment or deposit in any public sector company has been made and such public sector company ceases to be a public sector company,—

(A) such investment made in the shares of such company shall be deemed to be an investment made under this clause for a period of three years from the date on which such public sector company ceases to be a public sector company;

(B) such other investment or deposit shall be deemed to be an investment or deposit made under this clause for the period up to the date on which such investment or deposit becomes repayable by such company;

(viii) deposits with or investment in any bonds issued by a financial corporation which is engaged in providing long-term finance for industrial development in India and which is eligible for deduction under clause (viii) of sub-section (1) of section 36;

(ix) deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes and which is eligible for deduction under clause (viii) of sub-section (1) of section 36;

(ixa) deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for urban infrastructure in India.

Explanation.—For the purposes of this clause,—

(a) "long-term finance" means any loan or advance where the terms under which moneys are loaned or advanced provide for repayment along with interest thereof during a period of not less than five years;

(b) "public company" shall have the meaning assigned to it in section 3 of the Companies Act, 1956 (1 of 1956);

(c) "urban infrastructure" means a project for providing potable water supply, sanitation and sewerage, drainage, solid waste management, roads, bridges and flyovers for urban transport;

(x) investment in immovable property:

Explanation.—"Immovable property" does not include any machinery or plant (other than machinery or plant installed in a building for the convenient occupation of the building) even though attached to, or permanently fastened to, anything attached to the earth;

(xi) deposits with the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964);

(xii) any other form or mode of investment or deposit as may be prescribed.

(6) In this section where any income is required to be applied or accumulated or set apart for application, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year.

(7) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) of section 12AA or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] and the said registration is in force for any previous year, then, nothing contained in section 10 [other than clause (1) and clause (23C) thereof] shall operate to exclude any income derived from the property held under trust from the total income of the person in receipt thereof for that previous year.

12. Income of trusts or institutions from contributions.—(1) Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly.

(2) The value of any services, being medical or educational services, made available by any charitable or religious trust running a hospital or medical institution or an educational institution, to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3) of section 13, shall be deemed to be income of such trust or institution derived from property held under trust wholly for charitable or religious purposes during the previous year in which such services are so provided and shall be chargeable to income-tax notwithstanding the provisions of sub-section (1) of section 11.

Explanation.—For the purposes of this sub-section, the expression "value" shall be the value of any benefit or facility granted or provided free of cost or at concessional rate to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3) of section 13.

(3) Notwithstanding anything contained in section 11, any amount of donation received by the trust or institution in terms of clause (d) of sub-section (2) of section 80G in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (v) of sub-section (5C) of that section, in the manner specified

in that clause, or which has been utilised for purposes other than providing relief to the victims of earthquake in Gujarat or which remains unutilised in terms of sub-section (5C) of section 80G and not transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, 2004, shall be deemed to be the income of the previous year and shall accordingly be charged to tax.

12A. Conditions for applicability of sections 11 and 12.—(1) The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:—

(a) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Principal Commissioner or Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, whichever is later and such trust or institution is registered under section 12AA:

Provided that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution,—

(i) from the date of the creation of the trust or the establishment of the institution if the Principal Commissioner or Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons;

(ii) from the first day of the financial year in which the application is made, if the Principal Commissioner or Commissioner is not so satisfied:

Provided further that the provisions of this clause shall not apply in relation to any application made on or after the 1st day of June, 2007;

(aa) the person in receipt of the income has made an application for registration of the trust or institution on or after the 1st day of June, 2007 in the prescribed form and manner to the Principal Commissioner or Commissioner and such trust or institution is registered under section 12AA;

(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

(2) Where an application has been made on or after the 1st day of June, 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made.

Provided that where registration has been granted to the trust or institution under section 12AA, then, the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year:

Provided further that no action under section 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year:

Provided also that provisions contained in the first and second proviso shall not apply in case of any trust or institution which was refused registration or the registration granted to it was cancelled at any time under section 12AA.

12AA. Procedure for registration.—(1) The Principal Commissioner or Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) or clause (aa) of sub-section (1) of section 12A, shall—

(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and

(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he—

(i) shall pass an order in writing registering the trust or institution;

(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,

and a copy of such order shall be sent to the applicant:

Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

(1A) All applications, pending before the Principal Chief Commissioner or Chief Commissioner on which no order has been passed under clause (b) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the Principal Commissioner or Commissioner and the Principal Commissioner or Commissioner may proceed with such applications under that sub-section from the stage at which they were on that day.

(2) Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the endof the month in which the application was received under clause (a) or clause (aa) of sub-section (1) of section 12A.

(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996) and subsequently the Principal Commissioner or Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.

(4) Without prejudice to the provisions of sub-section (3), where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996) and subsequently it is noticed that the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13, then, the Principal Commissioner or the Commissioner may by an order in writing cancel the registration of such trust or institution:

Provided that the registration shall not be cancelled under this sub-section, if the trust or institution proves that there was a reasonable cause for the activities to be carried out in the said manner.

13. Section 11 not to apply in certain cases.—(1) Nothing, contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—

(a) any part of the income from the property held under a trust for private religious purposes which does not enure for the benefit of the public;

(b) in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste;

(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof—

(i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or

(ii) if any part of such income or any property of the trust or institution (whenever created or established) is during the previous year used or applied,

directly or indirectly for the benefit of any person referred to in sub-section (3):

Provided that in the case of a trust or institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3), if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution:

Provided further that in the case of a trust for religious purposes or a religious institution (whenever created or established) or a trust for charitable purposes or a charitable institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3), in so far as such use or application relates to any period before the 1st day of June, 1970;

(d) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof, if for any period during the previous year—

(i) any funds of the trust or institution are invested or deposited after the 28th day of February, 1983, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11; or

(ii) any funds of the trust or institution invested or deposited before the 1st day of March, 1983, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 continue to remain so invested or deposited after the 30th day of November, 1983; or

(iii) any shares in a company, other than—

(A) shares in a public sector company;

(B) shares prescribed as a form or mode of investment under clause (xii) of sub-section (5) of section 11,

are held by the trust or institution after the 30th day of November, 1983:

Provided that nothing in this clause shall apply in relation to—

(i) any assets held by the trust or institution where such assets form part of the corpus of the trust or institution as on the 1st day of June, 1973;

(ia) any accretion to the shares, forming part of the corpus mentioned in clause (i), by way of bonus shares allotted to the trust or institution;

(ii) any assets (being debentures issued by, or on behalf of, any company or corporation) acquired by the trust or institution before the 1st day of March, 1983;

(iia) any asset, not being an investment or deposit in any of the forms or modes specified in sub-section (5) of section 11, where such asset is not held by the trust or institution, otherwise than in any of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, 1993, whichever is later;

(iii) any funds representing the profits and gains of business, being profits and gains of any previous year relevant to the assessment year commencing on the 1st day of April, 1984, or any subsequent assessment year:

Explanation.—Where the trust or institution has any other income in addition to profits and gains of business, the provisions of clause (iii) of this proviso shall not apply unless the trust or institution maintains separate books of account in respect of such business.

Explanation.—For the purposes of sub-clause (ii) of clause (c), in determining whether any part of the income or any property of any trust or institution is during the previous year used or applied, directly or indirectly, for the benefit of any person referred to in sub-section (3), in so far as such use or application relates to any period before the 1st day of July, 1972, no regard shall be had to the amendments made to this section by section 7 other than sub-clause (ii) of clause (a) thereof of the Finance Act, 1972.

(2) Without prejudice to the generality of the provisions of clause (c) and clause (d) of sub-section (1), the income or the property of the trust or institution or any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3),—

(a) if any part of the income or property of the trust or institution is, or continues to be, lent to any person referred to in sub-section (3), for any period during the previous year without either adequate security or adequate interest or both;

(b) if any land, building or other property of the trust or institution is, or continues to be, made available for the use of any person referred to in sub-section (3) for any period during the previous year without charging adequate rent or other compensation;

(c) if any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in sub-section (3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services;

(d) if the services of the trust or institution are made available to any person referred to in sub-section (3) during the previous year without adequate remuneration or other compensation;

(e) if any share, security or other property is purchased by or on behalf of the trust or institution from any person referred to in sub-section (3) during the previous year for consideration which is more than adequate;

(f) if any share, security or other property is sold by or on behalf of the trust or institution to any person referred to in sub-section (3) during the previous year for consideration which is less than adequate;

(g) if any income or property of the trust or institution is diverted during the previous year in favour of any person referred to in sub-section (3):

Provided that this clause shall not apply where the income, or the value of the property or, as the case may be, the aggregate of the income and the value of the property so diverted does not exceed one thousand rupees;

(h) if any funds of the trust or institution are, or continue to remain, invested for any period during the previous year (not being a period before the 1st day of January, 1971) in any concern in which any person referred to in sub-section (3) has a substantial interest.

(3) The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following, namely:—

(a) the author of the trust or the founder of the institution;

(b) any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees;

(c) where such author, founder or person is a Hindu undivided family, a member of the family;

(cc) any trustee of the trust or manager (by whatever name called) of the institution;

(d) any relative of any such author, founder, person, member, trustee or manager as aforesaid;

(e) any concern in which any of the persons referred to in clauses (a), (b), (c), (cc) and (d) has a substantial interest.

(4) Notwithstanding anything contained in clause (c) of sub-section (1) but without prejudice to the provisions contained in clause (d) of that sub-section, in a case where the aggregate of the funds of the trust or institution invested in a concern in which any person referred to in sub-section (3) has a substantial interest, does not exceed five per cent. of the capital of that concern, the exemption under section 11 or section 12 shall not be denied in relation to any income other than the income arising to the trust or the institution from such investment, by reason only that the funds of the trust or the institution have been invested in a concern in which such person has a substantial interest.

(5) Notwithstanding anything contained in clause (d) of sub-section (1), where any assets (being debentures issued by, or on behalf of, any company or corporation) are acquired by the trust or institution after the 28th day of February, 1983, but before the 25th day of July, 1991, the exemption under section 11 or section 12 shall not be denied in relation to any income other than the income arising to the trust or the institution from such assets, by reason only that the funds of the trust or the institution have been invested in such assets if such funds do not continue to remain so invested in such assets after the 31st day of March, 1992.

(6) Notwithstanding anything contained in sub-section (1) or sub-section (2), but without prejudice to the provisions contained in sub-section (2) of section 12, in the case of a charitable or religious trust running an educational institution or a medical institution or a hospital, the exemption under section 11 or section 12 shall not be denied in relation to any income, other than the income referred to in sub-section (2) of section 12, by reason only that such trust has provided educational or medical facilities to persons referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3).

(7) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof, any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of that section.

(8) Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous year.

Explanation 1.—For the purposes of sections 11, 12, 12A and this section, "trust" includes any other legal obligation and for the purposes of this section "relative", in relation to an individual, means—

(i) spouse of the individual;
(ii) brother or sister of the individual;
(iii) brother or sister of the spouse of the individual;
(iv) any lineal ascendant or descendant of the individual;
(v) any lineal ascendant or descendant of the spouse of the individual;
(vi) spouse of a person referred to in sub-clause (ii), sub-clause (iii), sub-clause (iv) or sub-clause (v);
(vii) any lineal descendant of a brother or sister of either the individual or of the spouse of the individual.

Explanation 2.—A trust or institution created or established for the benefit of Scheduled Castes, Backward Classes, Scheduled Tribes or women and children shall not be deemed to be a trust or institution created or established for the benefit of a religious community or caste within the meaning of clause (b) of sub-section (1).

Explanation 3.—For the purposes of this section, a person shall be deemed to have a substantial interest in a concern,—

(i) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty per cent. of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of the other persons referred to in sub-section (3);
(ii) in the case of any other concern, if such person is entitled, or such person and one or more of the other persons referred to in sub-section (3) are entitled in the aggregate, at any time during the previous year, to not less than twenty per cent. of the profits of such concern.

13A. Special provision relating to incomes of political parties.—Any income of a political party which is chargeable under the head "Income from house property" or "Income from other sources" or "Capital gains" or any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the previous year of such political party:

Provided that:—

(a) such political party keeps and maintains such books of account and other documents as would enable the Assessing Officer to properly deduce its income therefrom;
(b) in respect of each such voluntary contribution in excess of twenty thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution; and
(c) the accounts of such political party are audited by an accountant as defined in the Explanation below sub-section (2) of section 288:

Provided further that if the treasurer of such political party or any other person authorised by that political party in this behalf fails to submit a report under sub-section (3) of section 29C of the Representation of the People Act, 1951 (43 of 1951), for a financial year, no exemption under this section shall be available for that political party for such financial year.

Explanation.—For the purposes of this section, political party" means a political party registered under section 29A of the representation of the People Act, 1951 (43 of 1951).

13B. Special provisions relating to voluntary contributions received by electoral trust.—Any voluntary contributions received by an electoral trust shall not be included in the total income of the previous year of such electoral trust, if—

(a) such electoral trust distributes to any political party, registered under section 29A of the Representation of the People Act, 1951 (43 of 1951), during the said previous year, ninety-five per cent. of the aggregate donations received by it during the said previous year along with the surplus, if any, brought forward from any earlier previous year; and

(b) such electoral trust functions in accordance with the rules made by the Central Government.

CHAPTER IV

COMPUTATION OF TOTAL INCOME

Heads of Income

14. Heads of income.—Save as otherwise provided by this Act, all income shall, for the purposes of charge of income-tax and computation of total income, be classified under the following heads of income:—

A.—Salaries.

C.—Income from house property.

D.—Profits and gains of business or profession.

E.—Capital gains.

F.—Income from other sources.

CHAPTER V

INCOME OF OTHER PERSONS, INCLUDED IN ASSESSEE'S TOTAL INCOME

60. Transfer of income where there is no transfer of assets.—All income arising to any person by virtue of a transfer whether revocable or not and whether effected before or after the commencement of this Act shall, where there is no transfer of the assets from which the income arises, be chargeable to income-tax as the income of the transferor and shall be included in his total income.

61. Revocable transfer of assets.—All income arising to any person by virtue of a revocable transfer of assets shall be chargeable to income-tax as the income of the transferor and shall be included in his total income.

62. Transfer irrevocable for a specified period.—(1) The provisions of section 61 shall not apply to any income arising to any person by virtue of a transfer—

(i) by way of trust which is not revocable during the lifetime of the beneficiary, and, in the case of any other transfer, which is not revocable during the lifetime of the transferee; or

(ii) made before the first day of April, 1961, which is not revocable for a period exceeding six years:

Provided that the transferor derives no direct or indirect benefit from such income in either case.

(2) Notwithstanding anything contained in sub-section (1), all income arising to any person by virtue of any such transfer shall be chargeable to income-tax as the income of the transferor as and when the power to revoke the transfer arises, and shall then be included in his total income.

63. "Transfer" and "revocable transfer" defined.—For the purposes of sections 60, 61 and 62 and of this section,—

(a) a transfer shall be deemed to be revocable if—

(i) it contains any provision for the re-transfer directly or indirectly of the whole or any part of the income or assets to the transferor, or

(ii) it, in any way, gives the transferor a right to reassume power directly or indirectly over the whole or any part of the income or assets;

(b) "transfer" includes any settlement, trust, covenant, agreement or arrangement.

64. Income of individual to include income of spouse, minor child, etc.—(1) In computing the total income of any individual, there shall be included all such income as arises directly or indirectly—

(ii) to the spouse of such individual by way of salary, commission, fees or any other form of remuneration whether in cash or in kind from a concern in which such individual has a substantial interest:

Provided that nothing in this clause shall apply in relation to any income arising to the spouse where the spouse possesses technical or professional qualifications and the income is solely attributable to the application of his or her technical or professional knowledge and experience;

(iv) subject to the provisions of clause (i) of section 27, to the spouse of such individual from assets transferred directly or indirectly to the spouse by such individual otherwise than for adequate consideration or in connection with an agreement to live apart;

(vi) to the son's wife, of such individual, from assets transferred directly or indirectly on or after the 1st day of June, 1973, to the son's wife by such individual otherwise than for adequate consideration;

(vii) to any person or association of persons from assets transferred directly or indirectly otherwise than for adequate consideration to the person or association of persons by such individual, to the extent to which the income from such assets is for the immediate or deferred benefit of his or her spouse; and

(viii) to any person or association of persons from assets transferred directly or indirectly on or after the 1st day of June, 1973, otherwise than for adequate consideration, to the person or association of persons by such individual, to the extent to which the income from such assets is for the immediate or deferred benefit of his son's wife.

Explanation 1.—For the purposes of clause (ii), the individual in computing whose total income the income referred to in that clause is to be included, shall be the husband or wife whose total income (excluding the income referred to in that clause) is greater; and, where any such income is once included in the total income of either spouse, any such income arising in any succeeding year shall not be included in the total income of the other spouse unless the Assessing Officer is satisfied, after giving that spouse an opportunity of being heard, that it is necessary so to do.

Explanation 2.— For the purposes of clause (ii), an individual shall be deemed to have a substantial interest in a concern—

(i) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty per cent of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of his relatives;

(ii) in any other case, if such person is entitled, or such person and one or more of his relatives are entitled in the aggregate, at any time during the previous year, to not less than twenty per cent of the profits of such concern.

Explanation 3.— For the purposes of clauses (iv) and (vi), where the assets transferred directly or indirectly by an individual to his spouse or son's wife (hereafter in this *Explanation* referred to as "the transferee") are invested by the transferee,—

(i) in any business, such investment being not in the nature of contribution of capital as a partner in a firm or, as the case may be, for being admitted to the benefits of partnership in a firm, that part of the income arising out of the business to the transferee in any previous year, which bears the same proportion to the income of the transferee from the business as the value of the assets aforesaid as on the first day of the previous year bears to the total investment in the business by the transferee as on the said day;

(ii) in the nature of contribution of capital as a partner in a firm, that part of the interest receivable by the transferee from the firm in any previous year, which bears the same proportion to the interest receivable by the transferee from the firm as the value of investment aforesaid as on the first day of the previous year bears to the total investment by way of capital contribution as a partner in the firm as on the said day,

shall be included in the total income of the individual in that previous year.

(1A) In computing the total income of any individual, there shall be included all such income as arises or accrues to his minor child, not being a minor child suffering from any disability of the nature specified in section 80U:

Provided that nothing contained in this sub-section shall apply in respect of such income as arises or accrues to the minor child on account of any—

(a) manual work done by him; or

(b) activity involving application of his skill, talent or specialised knowledge and experience.

Explanation.— For the purposes of this sub-section, the income of the minor child shall be included,—

(a) where the marriage of his parents subsists, in the income of that parent whose total income (excluding the income includible under this sub-section) is greater; or

(b) where the marriage of his parents does not subsist, in the income of that parent who maintains the minor child in the previous year,

and where any such income is once included in the total income of either parent, any such income arising in any succeeding year shall not be included in the total income of the other parent, unless the Assessing Officer is satisfied, after giving that parent an opportunity of being heard, that it is necessary so to do.

(2) Where, in the case of an individual being a member of a Hindu undivided family, any property having been the separate property of the individual has, at any time after the 31st day of December, 1969, been converted by the individual into property belonging to the family through the act of impressing such separate property with the character of property belonging to the family or throwing it into the common stock of the family or been transferred by the individual, directly or indirectly, to the family otherwise than for adequate consideration (the property so converted or transferred being hereinafter referred to as the converted property), then, notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, for the purpose of computation of the total income of the individual under this Act for any assessment year commencing on or after the 1st day of April, 1971,—

(a) the individual shall be deemed to have transferred the converted property, through the family, to the members of the family for being held by them jointly;

(b) the income derived from the converted property or any part thereof shall be deemed to arise to the individual and not to the family;

(c) where the converted property has been the subject-matter of a partition (whether partial or total) amongst the members of the family, the income

derived from such converted property as is received by the spouse on partition shall be deemed to arise to the spouse from assets transferred indirectly by the individual to the spouse and the provisions of sub-section (1) shall, so far as maybe, apply accordingly:

Provided that the income referred to in clause (b) or clause (c) shall, on being included in the total income of the individual, be excluded from the total income of the family or, as the case may be, the spouse of the individual.

Explanation 1.—For the purposes of sub-section (2),—

"property" includes any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale thereof and where the property is converted into any other property by any method, such other property.

Explanation 2.—For the purposes of this section, "income" includes loss.

65. Liability of person in respect of income included in the income of another person.—Where, by reason of the provisions contained in this Chapter or in clause (i) of section 27, the income from any asset or from membership in a firm of a person other than the assessee is included in the total income of the assessee, the person in whose name such asset stands or who is a member of the firm shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be liable, on the service of a notice of demand by the Assessing Officer in this behalf, to pay that portion of the tax levied on the assessee which is attributable to the income so included, and the provisions of Chapter XVIID shall, so far as may be, apply accordingly:

Provided that where any such asset is held jointly by more than one person, they shall be jointly and severally liable to pay the tax which is attributable to the income from the assets so included.

CHAPTER VI
AGGREGATION OF INCOME AND SET-OFF OR CARRY FORWARD OF LOSS

Aggregation of Income

66. Total income.—In computing the total income of an assessee, there shall be included all income on which no income-tax is payable under Chapter VIL.

67A. Method of computing a member's share in the income of association of persons or body of individuals.—(1) In computing the total income of an assessee who is a member of an association of persons or a body of individuals wherein the shares of the members are determinate and known (other than a company or a co-operative society or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India), whether the net result of the computation of the total income of such association or body is a profit or a loss, his share (whether a net profit or net loss) shall be computed as follows, namely:—

(a) any interest, salary, bonus, commission or remuneration by whatever name called, paid to any member in respect of the previous year shall be deducted from the total income of the association or body and the balance ascertained and apportioned among the members in the proportions in which they are entitled to share in the income of the association or body;

(b) where the amount apportioned to a member under clause (a) is a profit, any interest, salary, bonus, commission or remuneration aforesaid paid to the member by the association or body in respect of the previous year shall be added to that amount, and the result shall be treated as the member's share in the income of the association or body;

(c) where the amount apportioned to a member under clause (a) is a loss, any interest, salary, bonus, commission or remuneration aforesaid paid to the

member by the association or body in respect of the previous year shall be adjusted against that amount, and the result shall be treated as the member's share in the income of the association or body.

(2) The share of a member in the income or loss of the association or body, as computed under sub-section (1), shall, for the purposes of assessment, be apportioned under the various heads of income in the same manner in which the income or loss of the association or body has been determined under each head of income.

(3) Any interest paid by a member on capital borrowed by him for the purposes of investment in the association or body shall, in computing his share chargeable under the head "Profits and gains of business or profession" in respect of his share in the income of the association or body, be deducted from his share.

Explanation.—In this section, "paid" has the same meaning as is assigned to it in clause (2) of section 43.

CHAPTER XV
LIABILITY IN SPECIAL CASES

A.—Legal Representatives

159. Legal representatives.—(1) Where a person dies, his legal representatives shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

(2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1),—

(a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;

(b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and

(c) all the provisions of this Act shall apply accordingly.

(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.

(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

(5) The provisions of sub-section (2) of section 161, section 162 and section 167, shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

(6) The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub-section (5), be limited to the extent to which the estate is capable of meeting the liability.

B.—Representative assessees—general provisions

160. Representative assessee.—(1) For the purposes of this Act, "representative assessee" means—

(i) in respect of the income of a non-resident specified in sub-section (1) of section 9, the agent of the non-resident, including a person who is treated as an agent under section 163;

(ii) in respect of the income of a minor, lunatic or idiot, the guardian or manager who is entitled to receive or is in receipt of such income on behalf of such minor, lunatic or idiot;

(iii) in respect of income which the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever his designation, who in fact manages property on behalf of another) appointed by or under any order of a court, receives or is entitled to receive, on behalf or for the benefit of any person, such Court of Wards, Administrator-General, Official Trustee, receiver or manager;

(iv) in respect of income which a trustee appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913), receives or is entitled to receive on behalf, or for the benefit, of any person, such trustee or trustees;

(v) in respect of income which a trustee appointed under an oral trust receives or is entitled to receive on behalf, or for the benefit, of any person, such trustee or trustees.

Explanation 1.—A trust which is not declared by a duly executed instrument in writing including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913), shall be deemed, for the purposes of clause (IV), to be a trust declared by a duly executed instrument in writing if a statement in writing, signed by the trustee or trustees, setting out the purpose or purposes of the trust, particulars as to the trustee or trustees, the beneficiary or beneficiaries and the trust property, is forwarded to the Assessing Officer,—

(i) where the trust has been declared before the 1st day of June, 1981, within a period of three months from that day; and

(ii) in any other case, within three months from the date of declaration of the trust.

Explanation 2.—For the purposes of clause (v), "oral trust" means a trust which is not declared by a duly executed instrument in writing including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913), and which is not deemed under *Explanation 1* to be a trust declared by a duly executed instrument in writing.

(2) Every representative assessee shall be deemed to be an assessee for the purposes of this Act.

161. Liability of representative assessee.—(1) Every representative assessee, as regards the income in respect of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, and shall be liable to assessment in his own name in respect of that income; but any such assessment shall be deemed to be made upon him in his representative capacity only, and the tax shall, subject to the other provisions contained in this Chapter, be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.

(1A) Notwithstanding anything contained in sub-section (1), where any income in respect of which the person mentioned in clause (iv) of sub-section (1) of section 160 is liable as representative assessee consists of, or includes, profits and gains of business, tax shall be charged on the whole of the income in respect of which such person is so liable at the maximum marginal rate:

Provided that the provisions of this sub-section shall not apply where such profits and gains are receivable under a, trust declared by any person by will exclusively for the benefit of any relative dependent on him for support and maintenance and such trust is the only trust so declared by him.

(2) Where any person is, in respect of any income, assessable under this Chapter in the capacity of a representative assessee, he shall not, in respect of that income, be assessed under any other provision of this Act.

162. Right of representative assessee to recover tax paid.—(1) Every representative assessee who, as such, pays any sum under this Act, shall be entitled to recover the sum so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, an amount equal to the sum so paid.

(2) Any representative assessee, or any person who apprehends that he may be assessed as a representative assessee, may retain out of any money payable by him to the person on whose behalf he is liable to pay tax (hereinafter in this section referred to as the principal), a sum equal to his estimated liability under this Chapter, and in the event of any disagreement between the principal and such representative assessee or person as to the amount to be so retained, such representative assessee or person may secure from the Assessing Officer a certificate stating the amount to be so retained pending final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount.

(3) The amount recoverable from such representative assessee or person at the time of final settlement shall not exceed the amount specified in such certificate, except to the extent to which such representative assessee or person may, at such time, have in his hands additional assets of the principal.

C.—Representative assessees—Special Cases

163. Who may be regarded as agent.—(1) For the purposes of this Act, "agent", in relation to a non-resident, includes any person in India—

(a) who is employed by or on behalf of the non-resident; or

(b) who has any business connection with the non-resident; or

(c) from or through whom the non-resident is in receipt of any income, whether directly or indirectly; or

(d) who is the trustee of the non-resident;

and includes also any other person who, whether a resident or non-resident, has acquired by means of a transfer, a capital asset in India:

Provided that a broker in India who, in respect of any transactions, does not deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker shall not be deemed to be an agent under this section in respect of such transactions, if the following conditions are fulfilled, namely:—

(i) the transactions are carried on in the ordinary course of business through the first-mentioned broker; and

(ii) the non-resident broker is carrying on such transactions in the ordinary course of his business and not as a principal.

Explanation.—For the purposes of this sub-section, the expression "business connection" shall have the meaning assigned to it in *Explanation* 2 to clause (i) of sub-section (1) of section 9 of this Act.

(2) No person shall be treated as the agent of a non-resident unless he has had an opportunity of being heard by the Assessing Officer as to his liability to be treated as such.

164. Charge of tax where share of beneficiaries unknown.—(1) Subject to the provisions of sub-sections (2) and (3), where any income in respect of which the persons mentioned in clauses (iii) and (iv) of sub-section (1) of section 160 are liable as representative assessees or any part thereof is not specifically receivable on behalf or for the benefit of any one person or where the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable are

indeterminate or unknown (such income, such part of the income and such persons being hereafter in this section referred to as "relevant income", "part of relevant income" and "beneficiaries", respectively), tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate:

Provided that in a, case where—

(i) none of the beneficiaries has any other income chargeable under this Act exceeding the maximum amount not chargeable to tax in the case of an association of persons or is a beneficiary under any other trust; or

(ii) the relevant income or part of relevant income is receivable under a trust declared by any person by will and such trust is the only trust so declared by him; or

(iii) the relevant income or part of relevant income is receivable under a trust created before the 1st day of March, 1970, by a non-testamentary instrument and the Assessing Officer is satisfied, having regard to all the circumstances existing at the relevant time, that the trust was created *bona fide* exclusively for the benefit of the relatives of the settlor, or where the settlor is a Hindu undivided family, exclusively for the benefit of the members of such family, in circumstances where such relatives or members were mainly dependent on the settlor for their support and maintenance; or

(iv) the relevant income is receivable by the trustees on behalf of a provident fund, superannuation fund, gratuity fund, pension fund or any other fund created *bona fide* by a person carrying on a business or profession exclusively for the benefit of persons employed in such business or profession,

tax shall be charged on the relevant income or part of relevant income as if it were the total income of an association of persons:

Provided further that where any income in respect of which the person mentioned in clause (iv) of sub-section (1) of section 160 is liable as representative assessee consists of, or includes, profits and gains of business, the preceding proviso shall apply only if such profits and gains are receivable under a trust declared by any person by will exclusively for the benefit of any relative dependent on him for support and maintenance and such trust is the only trust so declared by him.

(2) In the case of relevant income which is derived from property held under trust wholly for charitable or religious purposes, or which is of the nature referred to in sub-clause (iia) of clause (24) of section 2, or which is of the nature referred to in sub-section (4A) of section 11, tax shall be charged on so much of the relevant income as is not exempt under section 11 or section 12, as if the relevant income not so exempt were the income of an association of persons:

Provided that in a case where the whole or any part of the relevant income is not exempt under section 11 or section 12 by virtue of the provisions contained in clause (c) or clause (d) of sub-section (1) of section 13, tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate.

(3) In a case where the relevant income is derived from property held under trust in part only for charitable or religious purposes or is of the nature referred to in sub-clause (iia) of clause (24) of section 2 or is of the nature referred to in sub-section (4A) of section 11, and either the relevant income applicable to purposes other than charitable or religious purposes (or any part thereof) is not specifically receivable on behalf or for the benefit of any one person or the individual shares of the beneficiaries in the income so applicable are indeterminate or unknown, the tax chargeable on the relevant income shall be the aggregate of—

(a) the tax which would be chargeable on that part of the relevant income which is applicable to charitable or religious purposes (as reduced by the income, if any, which is exempt under section 11) as if such part (or such part as so reduced) were the total income of an association of persons; and

(b) the tax on that part of the relevant income which is applicable to purposes other than charitable or religious purposes, and which is either not specifically receivable on behalf or for the benefit of any one person or in respect of which the shares of the beneficiaries are indeterminate or unknown, at the maximum marginal rate:

Provided that in a case where—

(i) none of the beneficiaries in respect of the part of the relevant income which is not applicable to charitable or religious purposes has any other income chargeable under this Act exceeding the maximum amount not chargeable to tax in the case of an association of persons or is a beneficiary under any other trust; or

(ii) the relevant income is receivable under a trust declared by any person by will and such trust is the only trust so declared by him; or

(iii) the relevant income is receivable under a trust created before the 1st day of March, 1970, by a non-testamentary instrument and the Assessing Officer is satisfied, having regard to all the circumstances existing at the relevant time, that the trust, to the extent it is not for charitable or religious purposes, was created *bona fide* exclusively for the benefit of the relatives of the settlor, or where the settlor is a Hindu undivided family, exclusively for the benefit of the members of such family, in circumstances where such relatives or members were mainly dependent on the settlor for their support and maintenance,

tax shall be charged on the relevant income as if the relevant income (as reduced by the income, if any, which is exempt under section 11) were the total income of an association of persons:

Provided further that where the relevant income consists of, or includes, profits and gains of business, the preceding proviso shall apply only if the income is receivable under a trust declared by any person by will exclusively for the benefit of any relative dependent on him for support and maintenance, and such trust is the only trust so declared by him:

Provided also that in a case where the whole or any part of the relevant income is not exempt under section 11 or section 12 by virtue of the provisions contained in clause (c) or clause (d) of sub-section (1) of section 13, tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate.

Explanation 1.—For the purposes of this section,—

(i) any income in respect of which the persons mentioned in clause (iii) and clause (iv) of sub-section (1) of section 160 are liable as representative assessee or any part thereof shall be deemed as being not specifically receivable on behalf or for the benefit of any one person unless the person on whose behalf or for whose benefit such income or such part thereof is receivable during the previous year is expressly stated in the order of the court or the instrument of trust or wakf deed, as the case may be, and is identifiable as such on the date of such order, instrument or deed;

(ii) the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is received shall be deemed to be indeterminate or unknown unless the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable, are expressly stated in the order of the court or the instrument of trust or wakf deed, as the case may be, and are ascertainable as such on the date of such order, instrument or deed.

164A. Charge of tax in case of oral trust.—Where a trustee receives or is entitled to receive any income on behalf or for the benefit of any person under an oral trust, then, notwithstanding anything contained in any other provision of this Act, tax shall be charged on such income at the maximum marginal rate.

Explanation.—For the purposes of this section,—

(ii) "oral trust" shall have the meaning assigned to it in Explanation 2 below sub-section (1) of section 160.

165. Case where part of trust income is chargeable.—Where part only of the income of a trust is chargeable under this Act, that proportion only of the income receivable by a beneficiary from the trust which the part so chargeable bears to the whole income of the trust shall be deemed to have been derived from that part.

D.—Representative assessees—Miscellaneous Provisions

166. Direct assessment or recovery not barred.—Nothing in the foregoing sections in this Chapter shall prevent either the direct assessment of the person on whose behalf or for whose benefit income therein referred to is receivable, or the recovery from such person of the tax payable in respect of such income.

167. Remedies against property in cases of representative assessees.—The Assessing Officer shall have the same remedies against all property of any kind vested in or under the control or management of any representative assessee as he would have against the property of any person liable to pay any tax, and in as full and ample a manner, whether the demand is raised against the representative assessee or against the beneficiary direct.

167B. Charge of tax where shares of members in association of persons or body of individuals unknown, etc.—(1) Where the individual shares of the members of an association of persons or body of individuals (other than a company or a co-operative society or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India) in the whole or any part of the income of such association or body are indeterminate or unknown, tax shall be charged on the total income of the association or body at the maximum marginal rate:

Provided that where the total income of any member of such association or body is chargeable to tax at a rate which is higher than the maximum marginal rate, tax shall be charged on the total income of the association or body at such higher rate.

(2) Where, in the case of an association of persons or body of individuals as aforesaid not being a case falling under sub-section (1),—

(i) the total income of any member thereof for the previous year (excluding his share from such association or body) exceeds the maximum amount which is not chargeable to tax in the case of that member under the Finance Act of the relevant year, tax shall be charged on the total income of the association or body at the maximum marginal rate;

(ii) any member or members thereof is or, are chargeable to tax at a rate or rates which is or are higher than the maximum marginal rate, tax shall be charged on that portion or portions of the total income of the association or body which is or are relatable to the share or shares of such member or members at such higher rate or rates, as the case may be, and the balance of the total income of the association or body shall be taxed at the maximum marginal rate.

Explanation.—For the purposes of this section, the individual shares of the members of an association of persons or body of individuals in the whole or any part of the income of such association or body shall be deemed to be indeterminate or unknown if such shares (in relation to the whole or any part of such income) are indeterminate or unknown on the date of formation of such association or body or at any time thereafter.

PART K
OTHER RELEVANT STATUTES

36

THE PROTECTION OF HUMAN RIGHTS ACT, 1993

(Relevant Extracts)

1. Short title, extent and commencement.—(1) This Act may be called the Protection of Human Rights Act, 1993.

(2) It extends to the whole of India:

Provided that it shall apply to the State of Jammu and Kashmir only in so far as it pertains to the matters relatable to any of the entries enumerated in List I or List III in the Seventh Schedule to the Constitution as applicable to that State.

(3) It shall be deemed to have come into force on the 28th day of September, 1993.

3. Constitution of a National Human Rights Commission.—(1) The Central Government shall constitute a body to be known as the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, it under this Act.

(2) The Commission shall consist of—

(a) a Chairperson who has been a Chief Justice of the Supreme Court;

(b) one Member who is, or has been, a Judge of the Supreme Court;

(c) one Member who is, or has been, the Chief Justice of a High Court;

(d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

(3) The Chairperson of the National Commission for Minorities, The National Commission for the Scheduled Castes, the National Commission for the Scheduled Tribes and the National Commission for Women shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12.

(4) There shall be a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission (except judicial functions and the power to make regulations under section 40B) as may be delegated to him by the Commission or the Chairperson, as the case may be.

(5) The headquarters of the Commission shall be at Delhi and the Commission may, with the previous approval of the Central Government, establish offices at other places in India.

12. Functions of the Commission.—The Commission shall perform all or any of the following functions, namely:—

(a) inquire, *suo-motu* or on a petition presented to it by a victim or any person on his behalf or on a direction or order of any court, into complaint of—

(i) violation of human rights or abetment thereof; or

(ii) negligence in the prevention of such violation, by a public servant;

(b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

(c) visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government;

(d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

(e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

(f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;

(g) undertake and promote research in the field of human rights;

(h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;

(i) encourage the efforts of non-governmental organisation and institutions working in the field of human rights;

(j) such other functions as it may consider necessary for the promotion of human rights.

13. Powers relating to inquiries.—(1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of witnesses and examining them on oath;

(b) discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code (45 of 1860).

(3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973 (2 of 1974), in so far as it may be applicable.

(4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) Where the Commission considers it necessary or expedient so to do, it may, by order, transfer any complaint filed or pending before it to the State Commission of the State from which the complaint arises, for disposal in accordance with the provisions of this Act:

Provided that no such complaint shall be transferred unless the same is one respecting which the State Commission has jurisdiction to entertain the same.

(7) Every complaint transferred under sub-section (6) shall be dealt with and disposed of by the State Commission as if it were a complaint initially filed before it.

14. Investigation.—(1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.

(2) For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilised under sub-section (1) may, subject to the direction and control of the Commission,—

(a) summon and enforce the attendance of any person and examine him;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof from any office.

(3) The provisions of section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are utilised under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The officer or agency whose services are utilised under sub-section (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.

15. Statement made by persons to the Commission.—No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

Provided that the statement—

(a) is made in reply to the question which he is required by the Commission to answer; or

(b) is relevant to the subject matter of the inquiry.

16. Persons likely to be prejudicially affected to be heard.—If, at any stage of the inquiry, the Commission—

(a) considers it necessary to inquire into the conduct of any person; or

(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry,

it shall give to the person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

17. Inquiry into complaints.—The Commission while inquiring into the complaints of violations of human rights may—

(i) call for the information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it:

Provided that—

(a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;

(b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;

(ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

30. Human Rights Courts.—For the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences:

Provided that nothing in this section shall apply if—

(a) a Court of Session is already specified as a special court; or

(b) a special court is already constituted,

for such offences under any other law for the time being in force.

31. Special Public Prosecutor.—For every Human Rights Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

38. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against the Central Government, State Government, Commission, the State Commission or any Member thereof or any person acting under the direction either of the Central Government, State Government, Commission or the State Commission in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or any order made thereunder or in respect of the publication by or under the authority of the Central Government, State Government, Commission or the State Commission of any report, paper or proceedings.



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National Policy On The Voluntary Sector - 2007

1. Preamble

1.1 This Policy is a commitment to encourage, enable and empower an independent, creative and effective voluntary sector, with diversity in form and function, so that it can contribute to the social, cultural and economic advancement of the people of India.

1.2 The voluntary sector has contributed significantly to finding innovative solutions to poverty, deprivation, discrimination and exclusion, through means such as awareness raising, social mobilization, service delivery, training, research, and advocacy. The voluntary sector has been serving as an effective non-political link between the people and the Government. This policy recognizes the important role that the voluntary sector has to play in various areas and affirms the growing need for collaboration with the voluntary sector by the Government, as well as by the private sector, at the local, provincial and national levels.

2. Scope of the Policy

2.1 In the Policy, Voluntary Organisations (VOs) mean to include organisations engaged in public service, based on ethical, cultural, social, economic, political, religious, spiritual, philanthropic or scientific & technological considerations. VOs include formal as well as informal groups, such as:—

> community-based organisations (CBOs); non-governmental development organisations (NGDOs); charitable organisations; support organisations; networks or federations of such organisations; as well as professional membership associations.

2.2 To be covered under the Policy, VOs should broadly have the following characteristics:

(a) They are private, *i.e.*, separate from Government

(b) They do not return profits generated to their owners or directors

(c) They are self-governing, *i.e.*, not controlled by Government.

(d) They are registered organisations or informal groups, with defined aims and objectives.

3. Objectives of the Policy

3.1 The specific objectives of the policy are listed below:

3.1.1 To create an enabling environment for VOs that stimulates their enterprise and effectiveness, and safeguards their autonomy;

3.1.2 To enable VOs to legitimately mobilize necessary financial resources from India and abroad;

3.1.3 To identify systems by which the Government may work together with VOs, on the basis of the principles of mutual trust and respect, and with shared responsibility; and,

3.1.4 To encourage VOs to adopt transparent and accountable systems of governance and management.

The following paragraphs describe how these objectives are to be achieved.

4. Establishing an Enabling Environment for the Voluntary Sector

4.1 The independence of VOs allows them to explore alternative paradigms of development to challenge social, economic and political forces that may work against public interest and to find new ways to combat poverty, deprivation and other social problems. It is therefore crucial that all laws, policies, rules and regulations relating to VOs categorically safeguard their autonomy, while simultaneously ensuring their accountability.

4.2 Voluntary organisations may be registered as societies, as charitable trusts, or as non-profit companies under Central or State laws. Some States have adopted the Societies Registration Act (1860), with amendments, while others have independent laws. Similarly, laws relating to charitable trusts vary across States. Over time, many of these laws and their corresponding rules have become complex and restrictive, thus leading to delays, harassment and corruption. As the nodal agency for interface between the Government and the Voluntary Sector, the Planning Commission will encourage State Governments to review prevailing laws & rules and simplify, liberalise and rationalise them as far as possible. In order to facilitate registration of non-profit companies, the Government will examine measures to simplify procedures under section 25 of the Companies Act (1956), including those for license, registration, and remuneration to member-employees.

4.3 The Government will also examine the feasibility of enacting a simple and liberal central law that will serve as an alternative all-India statute for registering VOs, particularly those that wish to operate in different parts of the country and even abroad. Such a law would co-exist with prevailing Central and State laws, allowing a VO the option of registering under one or more laws, depending on the nature and sphere of its activities.

4.4 There has been much public debate on the voluntary sector, particularly its governance, accountability, and transparency. It is widely believed that the voluntary sector must address these issues through suitable self-regulation. The Government will encourage the evolution of, and subsequently accord recognition to, an independent, national level, self-regulatory agency for the voluntary sector.

4.5 At the same time, there is need to bolster public confidence in the voluntary sector by opening it up to greater public scrutiny. The Government will encourage Central and State level agencies to introduce norms for filing basic documents in respect of VOs, which have been receiving funding by Government agencies and placing them in the public domain (with easy access through the internet) in order to inculcate a spirit of public oversight.

4.6 Public donation is an important source of funds for the voluntary sector and one that can and must increase substantially. Tax incentives play a positive role in this process. Stocks and shares have become a significant form of wealth in the country today. In order to encourage transfer of shares and stock options to VOs, the Government will consider suitable tax rebates for this form of donation. The Government will also simplify and streamline the system for granting income tax exemption status to charitable projects under the Income Tax Act. At the same time, the Government will consider tightening administrative and penal procedures to ensure that these incentives are not misused by paper charities for private financial gain.

4.7 International funding of voluntary organisations plays a small, but significant part in supporting such organisations and their work in the country. An organisation seeking foreign funding must be registered under the Foreign Contribution (Regulation) Act. This law prescribes stringent screening norms that often restrict the ability of VOs to avail foreign funds. When approved, there are problems like funds must be held in a single bank account, thus presenting enormous difficulties to VOs working at different locations. The Government will review the FCRA and simplify its provisions that apply to VOs, from time-to-time, in consultation with the joint consultative group to be set up by the concerned Ministry (as suggested under para 5.4).

4.8 The Central Government has framed guidelines for bilateral agencies to give direct assistance to voluntary organisations for projects of social and economic importance. It controls access to such funds and their utilisation, both through the FCRA and through regulation by the Department of Economic Affairs. This system needs to be simplified in consultation with the joint consultative group to be set-up by the concerned Ministry (as suggested under para 5.4).

4.9 The Government will encourage all relevant Central and State Government agencies to introduce pre-service and in-service training modules on constructive relations with the voluntary sector. Such agencies should introduce time bound procedures for dealing with the VOs. These would cover registration, income tax clearances, financial assistance, etc. There would be formal systems for registering complaints and for redressing grievances of VOs.

5. Partnership in Development

5.1 The voluntary sector can play an important role in the development process, particularly through community participation. VOs can offer alternative perspectives; committed expertise; an understanding of the local opportunities and constraints; and perhaps most importantly, the capacity to conduct a meaningful dialogue with communities, particularly those that are disadvantaged. It is therefore essential that the Government and the Voluntary Sector work together. Where feasible, such partnership may also include other entities such as *panchayati raj* institutions, municipalities, academic institutions, and private sector organisations.

5.2 Partnership between Government and VOs implies identifying shared goals and defining complementary roles. It must be based on the basic principles of mutual trust and respect, with shared responsibility and authority. These principles must be explicit in the terms and conditions of the partnership. They must also be evident in the formal and informal systems of collaboration.

5.3 This Policy recognizes three instruments of partnership, *viz.*, (i) consultation, through a formal process of interaction at the Centre, State and District level; (ii) strategic collaboration to tackle complex interventions where sustained social mobilization is critical over the long-term; and (iii) project funding through standard schemes. The Government will ensure that these three instruments of partnership are given due attention in Annual Plans prepared by Ministries and States. The action that will be taken in respect of each of the three instruments is discussed in the following paragraphs.

5.4 The Government will encourage setting up of Joint Consultative Groups/Forums or Joint Machineries of government and voluntary sector representatives, by relevant Central Departments and State Governments. It will also encourage district administrations, district planning bodies, district rural development agencies, *zilla parishads* and local governments to do so. These groups will be permanent forums with the explicit mandate to share ideas, views and information and to identify opportunities and mechanisms of working together. The Government will introduce suitable mechanisms for involving a wide cross-section of the voluntary sector in these Groups/Forums.

5.4.1 The expertise of the voluntary sector will also be utilized, by including experts from VOs in the committees, task forces, and advisory panels constituted by the Government from time-to-time to help address important issues.

5.5 The country faces a number of complex problems that require adaptive, multi-sectoral solutions where sustained social mobilization is particularly important. These include poverty alleviation, skill promotion, entrepreneurship development, empowerment of women, population stabilization, combating HIV/AIDS, managing water resources, elementary education and forest management, to name a few. Such areas urgently require strategic collaboration between the Government and VOs, through national level programmes that are long-term in duration, and utilize multiple strategies, methodologies and activities to achieve their objectives. The Government will identify national collaborative programmes to be implemented in partnership with VOs. Each national collaborative programme will involve a finite set of reputed, medium or large VOs with a proven track record, and the ability to work on a reasonably large scale. The Government will ensure that such national collaborative programmes are given due importance in Plan documents.

5.6 The third instrument of partnership between the Government and the voluntary sector is project funding. A large number of Government agencies operate schemes for financial assistance to VOs. These schemes usually deal with activities such as surveys, research, workshops, documentation, awareness raising, training, creation and running of public welfare facilities, and so on. Project grants are a useful means for the Government to promote its activities without its direct involvement. They are also a valuable source of support to small and medium VOs. Nevertheless, there are legitimate concerns regarding the effectiveness of grant-in-aid schemes. Out-dated design of funding schemes, arbitrary procedures, selection of unsuitable VOs, poor quality of implementation, and misuse of funds are some of the reasons for the possible defeat of the objectives of such funding. Concerned Government agencies would be encouraged to ensure proper accountability and monitoring of public funds distributed to VOs.

5.6.1 Some Central agencies have achieved good results by decentralizing the process of project funding. Rather than administering various schemes directly, they appoint regional or State level intermediary organisations to do so on their behalf. This allows for closer interaction for better selection and monitoring of VOs. Intermediaries could include umbrella VOs, professional or academic institutes, State Government agencies, or multi-stakeholder standing committees. The Government will review the experience of such decentralized funding and make suitable recommendations to Central agencies.

5.6.2 There is reason to believe that accreditation of VOs will lead to better funding decisions and make the funding processes more transparent. Further, accreditation may provide incentives for better governance, management and performance of VOs. No reliable accreditation system is in place at present. The Government will encourage various agencies, including those in the voluntary sector, to develop alternative accreditation methodologies. It will allow time for such methodologies to be debated and gain acceptability in the voluntary sector, before considering their application to Government funding of VOs.

6. Strengthening the Voluntary Sector

6.1 The Indian society has a well-established tradition of philanthropy. While a regime of tax concessions facilitates donations to charitable organisations, there is considerable untapped potential to channelise private wealth for public service. The Government will support and encourage existing, as well new, independent philanthropic institutions and private foundations to provide financial assistance to deserving VOs. It will also promote a dialogue among public and private grant makers so that they may take advantage of the best practices in grant making and fund-raising strategies.

6.2 Accountability to all stakeholders and transparency in functioning are key issues in good governance. The voluntary sector is expected to set its own benchmarks in these areas. Since VOs vary in their objectives and activities, it would be impractical to expect uniform norms for accountability and transparency. The Government will encourage support organisations, and VO networks & federations to facilitate discussion and consensus building on these issues. It will also encourage such agencies to advise and assist VOs to adopt norms that they find acceptable and useful. The Government will recognize excellence in governance among VOs by publicizing best practices.

6.3 Training is a crucial requirement for people working in the voluntary sector. However, this is often neglected on account of limited availability of good quality training courses that are reasonably priced. The Government will support and encourage organisations that train aspirants to enter the voluntary sector, as well as those already working in the sector. It will make available physical facilities currently available with its training institutes as a measure of such support.

6.4 Innovation in institutional, technical and social approaches to development problems is an essential ingredient of voluntary action. The Government will encourage and recognize innovative & pioneering work.

6.5 Databases of VOs working in different fields and at different levels are useful for communication within the voluntary sector, as well as between the voluntary sector and the public & private sector. The Government will commission suitable agencies to prepare and update such databases.

6.6 Information on Government policies and programmes is often difficult for VOs to access. The websites of various Government agencies will be re-designed to provide links to key documents and databases, including those related to project funding schemes.

6.7 The Government will encourage involvement of volunteers in public services, such as, at family welfare centers, primary health centers, hospitals, schools, vocational training centers, sanitation campaigns, etc.

This National Policy on the Voluntary Sector-2007 is the beginning of a process to evolve a new working relationship between the Government and the Voluntary Sector, without affecting the autonomy and identity of VOs.



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LIST OF CERTIFIED NGOs

(STATE-WISE)

Andhra Pradesh

- SERUDS Kurnool - Andhra Pradesh
- Social Activities for Rural Development Society-SARDS Tangutur- Andhra Pradesh
- Legal Education and Action for the Development of Society (LEADS) Nuzvid, Krishna District - Andhra Pradesh
- Uma Educational & Technical Society, Kakinada(UETS) Kakinada - Andhra Pradesh
- Kidpower India Visakhapatnam - Andhra Pradesh
- Kolleru Rural Development Service Organisation (KRDSO) Eluru, West Godavari - Andhra Pradesh
- Priyadarshini Seva Mandali Khammam - Andhra Pradesh
- Chaithanya Educational and Rural Development Society Guntur - Andhra Pradesh
- Compassionate Rural Association for Social Action (CRASA) Machilipatnam - Andhra Pradesh
- Sweekaar Rehabilitation Institute for Handicapped Secunderabad - Andhra Pradesh
- RAKSHANA Chirala - Andhra Pradesh
- Chitrika Secunderabad - Andhra Pradesh
- Ashray Akruti Hyderabad - Andhra Pradesh
- Jana Kalyan Welfare Society East Godavari District - Andhra Pradesh
- Sahara Hyderabad - Andhra Pradesh
- HELP Ongole - Andhra Pradesh
- Association for Rural Development and Action Research (ARDAR) Visakhapatnam - Andhra Pradesh
- Relief Organisation For Handicapped Anantapur - Andhra Pradesh
- ASSIST Guntur - Andhra Pradesh
- Child Aid Foundation Vijayawada - Andhra Pradesh
- Parents Association for Mentally Handicapped Persons (PAMENCAP) Godavarikhani, Dist: Karimnagar - Andhra Pradesh
- Praja Pragathi Trust Chitoor District - Andhra Pradesh

Assam

- Ashadeep Guwahati - Assam
- Atma Nirbhar-Ek Challenge Guwahati - Assam

Bihar

- Gramin Evam Nagar Vikas Parishad Patna - Bihar
- Lok Chetna Vikas Kendra Nawada - Bihar
- Jan Samadhan Jehanabad - Bihar
- Prayatna Patna - Bihar
- Abhiyan Patna - Bihar
- Shubham Muzaffarpur - Bihar
- Azad India Foundation Kishanganj - Bihar
- Daudnagar Organisation for Rural Development Patna - Bihar
- Shoshit Seva Sangh Patna - Bihar
- Development Of Social Technology (DOST) Patna - Bihar
- Bhartiya Gramin Vikas Evam Ayurved Sewa Sansthan Patna - Bihar
- Action for Development of Demos(ADD) Patna - Bihar
- Sugam Jagriti District Nalanda - Bihar
- Sita Gramoudyog Vikas Sansthan Patna - Bihar
- Integrated Development Foundation Patna - Bihar

Delhi

- Can Support New Delhi - Delhi
- Operation ASHA New Delhi - Delhi
- Dalit Foundation New Delhi - Delhi
- Dr. Shroff's Charity Eye Hospital New Delhi - Delhi
- Shrishti New Delhi - Delhi
- Sapna New Delhi - Delhi
- Going to School Fund New Delhi - Delhi
- Society For Child Development New Delhi - Delhi
- DISHA (Society for Rural & Urban Community Development) New Delhi - Delhi
- Turning Point Foundation New Delhi - Delhi
- Ashish Foundation for the Differently Abled (AFDA) Charitable Trust New Delhi - Delhi
- Psycho Educational Society Delhi - Delhi
- Development Research & Action Group (DRAG) New Delhi - Delhi
- Mobile Creches for Working Mothers' Children Delhi - Delhi
- Hemophilia Federation (India) New Delhi - Delhi
- SOS Children's Villages of India New Delhi - Delhi
- The NAZ Foundation (India) Trust New Delhi - Delhi
- Child Survival India Delhi - Delhi
- Deepalaya New Delhi - Delhi

- Udayan Care New Delhi - Delhi
- Salaam Baalak Trust - Delhi New Delhi - Delhi

Goa

- El Shaddai Charitable Trust Bardez – Goa

Gujarat

- Sanjivani Health and Relief Committee(SHRC) Ahmedabad - Gujarat
- Charutar Arogya Mandal Anand - Gujarat
- Janvikas Ahmedabad - Gujarat
- Sense International (India) Ahmedabad - Gujarat
- Gram Seva Trust Navsari - Gujarat
- Andhjan Kalyan Trust Rajkot - Gujarat
- Shikshan Ane Samaj Kalyan Kendra Amreli - Gujarat
- Blind People's Association, India Ahmedabad - Gujarat
- Saath (Initiatives for Equity in Development) Ahmedabad - Gujarat
- Ahmedabad Women's Action Group Ahmedabad - Gujarat
- Shree Navchetan Andhjan Mandal Madhapar, Bhuj-Kutch - Gujarat
- SPRAT - Society for Promoting Rationality Ahmedabad - Gujarat
- Vikas Samarthan Kendra Amreli - Gujarat
- Blind Welfare Council - Dahod Dahod - Gujarat
- Prabhat Education Foundation Ahmedabad - Gujarat
- Lokseva Shikshan Vikas Trust Banskantha - Gujarat

Haryana

- Khushboo Welfare Society Gurgaon - Haryana
- IIMPACT Gurgaon - Haryana
- Literacy India Gurgaon - Haryana

Jharkhand

- Network for Enterprise Enhancement and Development Support (NEEDS) Deoghar - Jharkhand
- Nav Bharat Jagriti Kendra Hazaribaug - Jharkhand
- Badlao Foundation Jamtara, Jharkhand - Jharkhand

Karnataka

- SGBS Trust Bangalore - Karnataka
- Maria Seva Sangha Bangalore - Karnataka
- Tropical Research & Development Centre (TRDC) Bangalore - Karnataka
- Akshara Foundation Bengalore - Karnataka
- Samarthanam Trust for the Disabled Bengaluru - Karnataka
- Foundation for Excellence India Trust (FFE India Trust) Bangalore - Karnataka
- Sathi, Bangalore - Karnataka
- Akhanda Seva for International Shanti (Operation Shanti) Mysore - Karnataka
- Association for the Mentally Challenged Bangalore - Karnataka

- SEEDA Dharwad - Karnataka
- Parikrma Humanity Foundation Bangalore - Karnataka
- The National Association for the Blind - Karnataka Branch Banglore - Karnataka
- Christel House India Kannur Post-Via Bagalur,Bangalore East - Karnataka
- Balajothi Centre for the Disabled Bangalore - Karnataka
- Spurthi Mahila Mandal (Bijapur) Bijapur - Karnataka
- Mahila Dakshata Samiti Bangalore - Karnataka
- Vishwas Trust Bangalore - Karnataka
- Vidyaranya Education and Development Society (VEDS) Bangalore - Karnataka
- Diya Foundation (DIYA) Bangalore - Karnataka
- Dream A Dream Bangalore - Karnataka
- Vathsalya Charitable Trust Bangalore - Karnataka
- Bharath Charitable Cancer Hospital & Institute (Trust) Mysore - Karnataka
- The Association of People with Disability Bangalore - Karnataka
- SAMUHA Kanakagiri - Karnataka
- Samveda Training & Research Centre Davangere - Karnataka
- International Human Development & Upliftment Academy Mysore - Karnataka
- Kutumba Bangalore - Karnataka
- Sampark Bangalore - Karnataka
- Mitra Jyothi Bangalore - Karnataka
- Anga Karunya Kendra Bangalore - Karnataka
- Ananya Trust Bangalore - Karnataka
- Manuvikasa Uttara Kannada District - Karnataka
- Supreme Vidya Sanstha Bagalkot – Karnataka

Kerala

- Adarsh Charitable Trust Ernakulam District - Kerala
- Devashrayam Charitable Society Palakkad - Kerala
- Wayanad Girijana Seva Trust Wayanad Dist - Kerala
- Institute of Applied Dermatology Kasargod - Kerala

Madhya Pradesh

- Community Development Centre Balaghat - Madhya Pradesh

Maharashtra

- Magic Bus Mumbai - Maharashtra
- Sanskruti Samvardhan Mandal Nanded - Maharashtra
- Social Action for Association and Development Pune - Maharashtra
- Bhagini Nivedita Pratishthan Pune - Maharashtra
- Janaseva Foundation Pune - Maharashtra
- MELJOL Mumbai - Maharashtra
- Jagruti Seva Sanstha Pune - Maharashtra
- SETU Charitable Trust Mumbai - Maharashtra

- Apnalaya Mumbai - Maharashtra
- National Society for Equal Opportunities for the Handicapped Mumbai - Maharashtra
- Saathi Mumbai - Maharashtra
- National Association for the Blind, India Mumbai - Maharashtra
- Vidhayak Sansad Thane - Maharashtra
- Mumbai Mobile Creches Mumbai - Maharashtra
- MAHAN Amaravati - Maharashtra
- Marathwada Gramin Vikas Sanstha (MGVS) Aurangabad - Maharashtra
- Society of Friends of the Sassoon Hospitals (SOFOSH) Pune - Maharashtra
- Tathapi Trust Pune - Maharashtra
- Loknayak Shikshan Mandal Sangli - Maharashtra
- Sangopita - A Shelter for Care Thane - Maharashtra
- International Leprosy union - Health Alliance (ILU) Pune - Maharashtra
- The Akanksha Foundation Mumbai - Maharashtra
- Swami Brahmanand Pratishthan Mumbai - Maharashtra
- Muktangan Mumbai - Maharashtra
- Community Aid & Sponsorship Programme (CASP) Pune - Maharashtra
- KIBBTUS, Pune - Maharashtra
- National Rural Research and Development Association (NRRDA) Thane - Maharashtra
- Salaam Baalak Trust - Mumbai - Maharashtra
- Kherwadi Social Welfare Association Mumbai - Maharashtra
- Ummeed Child Development Centre Mumbai - Maharashtra
- Sandnya Sanwardhan Sanstha Nagpur - Maharashtra
- MBA Foundation Mumbai - Maharashtra
- Catalysts For Social Action Pune - Maharashtra
- Society for the Education of the Crippled (Child and Adult) Mumbai - Maharashtra
- Sahaara, Mumbai - Maharashtra
- Make-a-Wish Foundation of India Mumbai - Maharashtra
- IDEA Foundation Pune - Maharashtra

Orissa

- Sahara for All Bhubaneshwar - Orissa
- Relief and Charitable Trust (KRCT) Bhubaneswar - Orissa
- Sahara, Orissa District Koraput - Orissa
- Alternative for Rural Movement (ARM) Balasore District - Orissa
- Vikash Bhubaneshwar - Orissa

Pondicherry

- Pondicherry Kidney Foundation Pondicherry - Pondicherry

Rajasthan

- Vishakha Group for Women's Education and Research Jaipur - Rajasthan
- Gram Chetna Kendra District Jaipur - Rajasthan
- Unnati Sansthan Udaipur - Rajasthan
- J. Watumull Global Hospital & Research Centre Mount Abu - Rajasthan
- IBTADA Alwar - Rajasthan
- Seva Mandir Udaipur - Rajasthan
- Gramin Vikas Vigyan Samiti Jodhpur - Rajasthan
- Vidya Bhawan Society Udaipur - Rajasthan
- Sahyog Sansthan Udaipur - Rajasthan

Tamil Nadu

- Amar Seva Sangam Ayikudy - Tamil Nadu
- Association for Sustainable Community Development (ASSCOD) Kancheepuram District - Tamil Nadu
- Hindu Mission Hospital Chennai - Tamil Nadu
- Jeevan Blood Bank And Research Center Chennai - Tamil Nadu
- PREED Madurai - Tamil Nadu
- Sankara Nethralaya Chennai - Tamil Nadu
- Valluvar Gurukulam Chennai - Tamil Nadu
- TANKER Foundation Chennai - Tamil Nadu
- The Banyan Chennai - Tamil Nadu
- DEAN Foundation, Hospice and Palliative Care Centre Chennai - Tamil Nadu
- Social Agriculture Children Education and Women Development Trust (SACEWD) Pudukkottai - Tamil Nadu
- Bharathamatha Family Welfare Foundation Thiruvarur - Tamil Nadu
- Literates Welfare Association (LAW) Theni - Tamil Nadu
- Hariksha People's Welfare Trust Tiruvannamalai - Tamil Nadu
- Society for Poor People Development Trichy (District) - Tamil Nadu
- Integrated Rural Community Development Society (IRCDS) Sivaganga - Tamil Nadu
- Arokiya Charity Pudukottai - Tamil Nadu
- Quarry Workers Development Society Dindigul - Tamil Nadu
- Centre for Appropriate Technology Nagercoil - Tamil Nadu
- Integrated Rural Workers Organisation (IRWO) Ramanathapuram - Tamil Nadu
- Society For Women's Education Economic Development (SWEED) Melur - Tamil Nadu
- Public Welfare & Development Society (PWDS) Erode Dist - Tamil Nadu
- Centre For Social Reconstruction (CSR) Nagercoil - Tamil Nadu
- Rural Organising for Social Improvement Foundation (ROSI Foundation) Pudukkottai - Tamil Nadu
- Vairam Telesis Education Centre (VTEC) Thiruvarur District - Tamil Nadu
- Health Education for Social Action Trust - HESAT Thanjavur - Tamil Nadu

- New Life Trichirapalli - Tamil Nadu
- SENSE Anuppanadi, Madurai - Tamil Nadu
- Sri Arunodayam Chennai - Tamil Nadu
- Community Action for Rural Development (CARD) Pudukkottai - Tamil Nadu
- Vidyarambam Chennai - Tamil Nadu
- Women's Emancipation and Development Trust (WED Trust) Madurai - Tamil Nadu
- Rural Welfare Organisation Dindigul - Tamil Nadu
- Native Medicare Charitable Trust Coimbatore - Tamil Nadu
- JK MAASS Foundation Madurai - Tamil Nadu
- Village Development Centre Tiruchirappalli - Tamil Nadu
- Deepam Educational Society for Health (DESH) Chennai - Tamil Nadu
- Guard Society Tirunelveli (Dt) - Tamil Nadu
- Schizophrenia Research Foundation (India) Chennai - Tamil Nadu
- Rehabilitation of the Socially afflicted, the retarded and the youth Trinelveli - Tamil Nadu
- ASHWINI Gudalur - Tamil Nadu
- Sevalaya Thiruvallur District - Tamil Nadu
- Youth Social Service Association Karaidudi Taluk, Sivagangai District - Tamil Nadu
- Gandhigram Trust Dindigul District - Tamil Nadu
- MASTERS Trust Madurai District - Tamil Nadu
- Good Shepherd Organisation (GOSON) Tiruvannamalai - Tamil Nadu
- Friends For The Needy Chennai - Tamil Nadu
- Sankara Eye Hospital, Pammal Chennai - Tamil Nadu
- Tamil Nadu People Welfare Association (TAPWA) Dindigul - Tamil Nadu
- Indian Community Foundation (ICF) Thiruvarur - Tamil Nadu
- Common Concern Initiative, We Care Trust Madurai - Tamil Nadu
- Vizhuthukal Trust Tirunelveli District - Tamil Nadu
- HELP Trust Tirunelveli District - Tamil Nadu
- People's Voluntary Integral Service Organisation Salem - Tamil Nadu
- Education, Communication and Development Trust (EDUCATR) Madurai - Tamil Nadu
- Students Partnership Worldwide India Project Trust (SPW) Vellore - Tamil Nadu
- Shriram Foundation Chennai - Tamil Nadu
- Society for Serving Humanity District Dindigul - Tamil Nadu
- Makkal Vilipunarvu Kalvi Sangam (MVKS) District Virudhunagar - Tamil Nadu
- Nethrodaya Chennai - Tamil Nadu

Tripura

- Voluntary Health Association of Tripura Agartala - Tripura

Uttar Pradesh

- Participatory Action & Community Empowerment (PACE) Lucknow - Uttar Pradesh
- Vidya & Child Noida - Uttar Pradesh
- Jan Manas Vikas Sansthan Lucknow - Uttar Pradesh
- Sai Kripa Noida - Uttar Pradesh
- Latika Roy Foundation Dehradun - Uttarakhand
- Purkal Youth Development Society Dehradun - Uttaranchal

West Bengal

- Vivekananda Seva Sangha Kolkata - West Bengal
- Divya Chaya Trust Kolkata - West Bengal
- Paripurnata Half-Way Home Kolkata - West Bengal
- Economic Rural Development Society (ERDS) Kolkata - West Bengal
- Vikahar Paribar Bikash Kendra Kolkata - West Bengal
- Bani Mandir South 24 Paraganas Distict. - West Bengal
- Sarada Ramkrishna (Sishu O Mahila) Sevashram South 24 Paraganas - West Bengal
- Child In Need Institute Kolkata - West Bengal
- Towards Future Kolkata - West Bengal
- VAANI, Deaf Children's Foundation Kolkata - West Bengal
- Parivaar Education Society District 24 Parganas - West Bengal
- Vivekananda Seva Samity Narendrapur - West Bengal



Part L
Select Lists

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LIST OF NON-FOREIGN SOURCE OF FUNDS UNDER FCRA

Every dollar or pound sterling that comes into India as a grant is not foreign funds. When funds are received from UN bodies or from Indian citizens living abroad, these are not covered by FCRA. Ministry of Home Affairs by notification S.O. 1014(E), published in Part 2, Sec. 3, sub-section (ii) of Gazette of India, Extraordinary, dated 13th November, 2000 has provided a list of organisations which are not a 'foreign source' for purposes of FCRA. Funds from them can be taken without FCRA approval:

1. AARRO — Afro — Asian Rural Reconstruction Organisation, New Delhi
2. ADB — African Development Bank, Abidjan
3. ADB — Asian Development Bank, Manila
4. APAARI — The Asia Pacific Association of Agricultural Research Institution, Bangkok
5. APCTT — Asia And Pacific Centre of Transfer of Technology, New Delhi
6. ACCU — Asia/Pacific Cultural Centre for UNESCO, Japan
7. Asian African Legal Consultative Committee, New Delhi
8. Asian and Pacific Development Administration, Kualalumpur.
9. Asian Productivity Organisation, Tokyo
10. Bureau (Secretariat) of the Convention on Wetlands (Ramsar), Gland, Switzerland
11. CABI — Commonwealth Agricultural Bureaux International, UK
12. CBD — Secretariat of the Convention on Biological Diversity, Montreal
13. CCD — Secretariat of the United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought/or Desertification, Especially in Africa, Bonn
14. CDB — Caribbean Development Bank, St. Michael, Barbados
15. CGIAR — Consultative Group on International Agricultural Research, Washington D.C.
16. CGPRT Centre — The Regional Co-ordination Centre for Research and Development of coarse Grains, Pulses, Roots, and Tuber crops in the Humid Tropics of Asia and the Pacific, Indonesia
17. CGRFA — Commission on Genetic Resources for Food and Agriculture, Rome
18. CIAT — International Centre for Tropical Agriculture, Columbia
19. CIFOR — Centre for International Forestry Research, Indonesia

20. CIMMYT — International Wheat and Maize Improvement Centre, Mexico
21. CIRDAP — Centre on Integrated Rural Development for Asia and the Pacific, Dhaka
22. CITES — Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Geneva
23. Commission on the Limit of the Continental Shelf, United Nations Divisions for Ocean Affairs and the Law of the Sea, New York
24. Commonwealth Secretariat, London
25. Department for Disarmament Affairs, New York
26. Department for General Assembly Affairs and Conference Services, New York
27. Department of Economic and Social Affairs, New York
28. Department of Management, New York
29. Department of Peacekeeping Operations, New York
30. Department of Political Affairs, New York
31. Department of Public Information, New York
32. ECA — Economic Commission for Africa, Addis Ababa, Ethiopia.
33. ECE — Economic Commission for Europe, Geneva
34. ECLAC — Economic Commission for Latin America and the Caribbean, Santiago, Chile.
35. ESCAP — Economic Commission for Asia and the Pacific, Bangkok, Thailand
36. ESCWA — Economic Commission for Western Asia, Beirut, Lebanon
37. European Community (EC)
38. FAO — Food and Agriculture Organisation, Rome
39. Global Environment Facility, Washington D.C.
40. IAEA — International Atomic Energy Agency, Vienna
41. IBRD1 [3] — International Bank for Reconstruction and Development, Washington D.C.
42. ICAO — International Civil Aviation Organisation, Montreal
43. ICARDA — International Centre for Agricultural Research in Dry Areas, Syria
44. ICGEB — International Centre for Genetic Engineering and Bio — Technology, New Delhi
45. ICGFI — International Consultative Group on Food Irradiation, Vienna
46. ICLARM — International Centre for Living Aquatic Resource Management, Philippines
47. ICRAF — International Centre of Research in Agro-forestry, Nairobi
48. ICRISAT — International Crops Research Institute for Semi-Arid Tropics, Hyderabad
49. ICSID — International Centre for the Settlement of Investment Disputes, Washington D.C.
50. IDA — International Development Association, Washington D.C.
51. IDB — Inter-American Development Bank, Washington D.C.
52. IFAD — International Fund for Agricultural Development, Rome
53. IFC — International Finance Cooperation, Washington D.C.

54. IFPRI — International Food Policy Research Institute, Washington D.C.
55. IIMI — International Irrigation Management Institute, Colombo
56. IITA — International Institute of Tropical Agriculture, Nigeria
57. ILO — International Labour Organisation, Geneva
58. ILRI — International Livestock Research Institute, Nairobi
59. IMF — International Monetary Fund, Washington D.C.
60. IMI — International Water Management Institute, Srilanka
61. IMO — International Maritime Organisation, London
62. INCB — International Narcotics Control Board, Vienna
63. INSTRAW — International Research and Training Institute for Advancement of Women, Santo Domingo, Dominican Republic
64. International Potato Centre, Peru
65. International Rice Research Institute, Manila, Philippines
66. International Seabed Authority, Kingston
67. International Sugar Organisation, London
68. International Tribunal for the Law of the Sea, Hamburg
69. IPCC — Intergovernmental Panel on Climate Change, Geneva
70. IPGRI — International Plant Genetic Resource Institute, Rome
71. ISNAR — International Service of National Agricultural Research, The Netherlands
72. ISTA — The International Seeds Testing Association, Zurich
73. ITC — International Trade Centre (UNCTAD/WTO), Geneva
74. ITU — International Telecommunication Union, Geneva
75. MIGA — Multilateral Investment Guarantee Agency, Washington D.C.
76. NAM S&T Centre — Centre for Science and Technology of the Non-Aligned and other Developing Countries, New Delhi
77. Office for Coordination of Humanitarian Affairs, New York
78. Office of Internal Oversight Services, New York
79. Office of Legal Affairs, New York
80. OHCHR — Office of the UN High Commissioner for Human Rights, Geneva
81. OPCW — Organisation for the Prohibition of Chemical Weapons, The Hague
82. Ozone Secretariat to the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer, Nairobi
83. PTS for CTBTO — Provisional Technical Secretariat for the Comprehensive Nuclear Test Ban Treaty Organisation, Vienna
84. RNAM — The Regional Network for Agriculture Machinery, Bangkok
85. Secretariat of the Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal, Geneva
86. UNAIDS — Joint United Nations Programme on HIV/AIDS, Geneva
87. UNCDF — United Nations Capital Development Fund, New York
88. UNCTAD — United Nations Conference on Trade and Development, Geneva
89. UNDCP — United Nations International Drug Control Programme, Vienna.

90. UNDP — United Nations Development Programme, New York
91. UNEP — United Nations Environment Programme, Nairobi
92. UNEP/CMS Secretariat of the Convention on the Conservation of Migratory Species of Wild Animals (CMS or Bonn Convention) Bonn
93. UNESCO — United Nations Educational, Scientific and Cultural Organisation, Paris
94. UNFCCC — Secretariat of the United Nations Framework Convention on Climate Change, Bonn
95. UNFPA — United Nations Population Fund, New York
96. UNHCHR — Office of the UN High Commissioner for Human Rights, Geneva
97. UNHCR — Office of the UN High Commissioner for Refugees, Geneva
98. UNICEF — United Nations Children's Fund, New York
99. UNICRI — United Nations Inter-regional Crime and Justice Research Institute, Rome
100. UNIDIR — United Nations Institute for Disarmament Research, Geneva
101. UNIDO — United Nations Industrial Development Organisation, Vienna
102. UNIFEM — United Nations Development Fund for Women, New York
103. UNITAR — United Nations Institute for Training and Research, Geneva.
104. United Nations Office at Geneva
105. United Nations Office at Nairobi
106. United Nations Office at Vienna
107. United Nations Outer Space Committee
108. UNOPS — United Nations Office for Project Services, New York
109. UNRISD — United Nations Research Institute for Social Development, Geneva.
110. UNRWA — United Nations Relief and work Agency for Palestine Refugees in the Near East, Ghaza And Aman
111. UNSCO — United Nations Statistical Office
112. UNSDRI — United Nations Social Defence Research Institute
113. UNU — United Nations University, Tokyo
114. UNV — United Nations Volunteers, Bonn.
115. UPO2[4] — Universal Postal Union, Berne, Switzerland
116. UPOV — International Union for the Protection of New Varieties of Plants, Geneva
117. WARDA — West Africa Development Association, Abidjan
118. WFC — World Food Council
119. WFP — World Food Programme, Rome
120. WHO — World Health Organisation, Geneva
121. WIPO — World Intellectual Property Organisation, Geneva
122. WMO — World Meterological Organisation, Geneva
123. WTO/OMT - World Tourism Organisation, Madrid

124. Following is a list of UN offices and its agencies which are not included in the Ministry of Home Affairs Notification 3.

1. ACABQ — Advisory Committee on Administrative and Budgetary Questions, New York
2. Ad Hoc Inter — agency Meeting on Women, New York
3. Administrative Committee on Coordination (ACC4), New York
4. CCAQ (FB) — Consultative Committee on Administrative Questions (Financial and Budgetary Questions), Geneva
5. CCAQ (PER) — Consultative Committee on Administrative Questions (Personnel and General Administrative Questions), Geneva
6. CCPOQ — Consultative Committee on Programme and Operational Questions, Geneva
7. EDI — Economic Development Institute, Washington
8. IACSD — Inter-agency Committee on Sustainable Development, New York
8. IAMLADP — Inter-agency Meeting on Language Arrangements, Documentation and Publications, New York
9. IBE — International Bureau of Education, Geneva
10. ICC — International Computing Centre, Geneva
11. ICJ — International Court of Justice, The Hague
12. ICS — International Centre for Science and High Technology - Trieste, Italy
13. ICSC — International Civil Service Commission, New York
14. ILO/ITC — International Training Centre, Turin, Italy
15. IMF Institute
16. ISCC — Information Systems Coordination Committee, Geneva
17. JIAMCATT — Joint Inter-agency Meeting on Computer-assisted Translation and Terminology, Geneva
18. JIU — Joint Inspection Unit, Geneva
19. JUNIC — Joint United Nations Information Committee, New York
20. OOSA — Office for Outer Space Affairs, Vienna
21. Organisational Committee of ACC, New York
22. UNCC — United Nations Compensation Commission, Geneva
23. UNCHS (Habitat) — United Nations Centre for Human Settlements, Nairobi
24. UNCITRAL — United Nations Commission on International Trade Law, Vienna
25. United Nations Board of Auditors, New York
26. UNJSPF — United Nations Joint Staff Pension Fund, New York, USA
27. UNSC — United Nations Staff College - Turin, Italy



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List of International Covenants/ Conventions/Treaties Ratified/ Acceded/Signed by India*

Human Rights

(Racial issues, political rights, torture and social rights)

The Universal Declaration of Human Rights (UDHR) 1948

The International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 — Ratified on 10th April, 1979

The International Covenant on Civil and Political Rights (ICCPR) 1966 - Acceded on 10th April, 1979.

The International Convention on Elimination of all Forms of Racial Discrimination 1966 — Ratified on 3rd December, 1968.

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984 — Signed on 8th October, 1997.

International Covenant on Suppression and Punishment of the Crime of Apartheid 1973 — Acceded to on 22nd September, 1977.

Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity — Signed on 12th January, 1971.

Slavery Convention, 1926 ratified 18th June, 1927.

Protocol amending the Slavery Convention signed at Geneva on 25th September, 1926

Supplementary Convention on the Evolution of Slavery, Slave Trade and Institutions and Practice Similar to Slavery — Ratified on 23rd June, 1960.

The Convention on the Prevention and Punishment on the Crime on Genocide 1948 — Ratified on 27th August, 1959.

Women

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others — Ratified on 9th January, 1953.

* This list provides an overview of the scope and extent of India's international participation in addressing worldwide issues which are more often than not the mission and objectives of NGOs.

Convention on the Nationality of the Married Women — Signed on 15th May, 1957.

Convention on the Political Rights of the Women — Ratified on 1st November, 1961.

The Convention on Elimination of all Forms of Discrimination Against Women 1979 — Signed on 30th July, 1981.

Children

The Convention on Rights of the Child 1989 came into force in 1990.



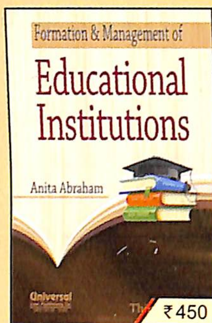
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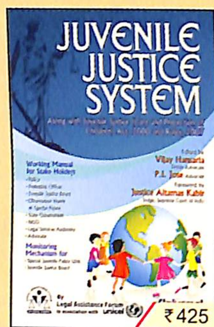
List of Central and State Legislations on Society

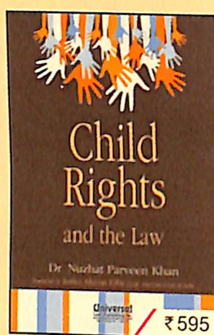
1. Societies Registration Act, 1860
2. Andhra Pradesh Amendment Act
3. Assam Amendment Act
4. Bihar Amendment Act
5. Bihar Societies Registration Rules, 1956
6. Delhi (Amendment) Act
7. Goa Amendment Act
8. Gujarat Amendment Act
9. Haryana Amendment Act
10. H.P. Amendment Act
11. Jammu & Kashmir Societies Registration Act
12. Karnataka Societies Registration Act
13. Kerala Amendment Act
14. Madhya Pradesh Society Registrikaran Adhiniyam,1973
15. M.P. Society Registrikaran Niyam, 1975
16. Maharashtra Amendment Act
17. Societies Registration (Maharashtra) Rules, 1971
18. Manipur (Amendment) Act
19. Meghalaya Societies Registration Act, 1983
20. Nagaland Amendment Act
21. Orissa Amendment Act
22. Punjab Amendment Act
23. Pondicherry Amendment Act
24. Rajasthan Societies Registration Act, 1958
25. Tamil Nadu Societies Registration Rules, 1978
26. Andhra Pradesh (Telangana Area) Public Societies Registration Act
27. Travancore Cochin Literary Scientific and Charitable Societies Registration Act, 1955
28. Tripura Amendment Act
29. West Bengal Societies Registration Act, 1961
30. U.P. Amendment Act
31. U.P. Society Registration Rules, 1976

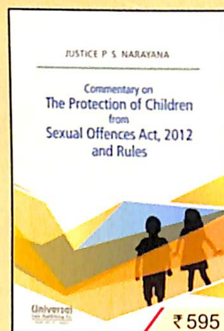


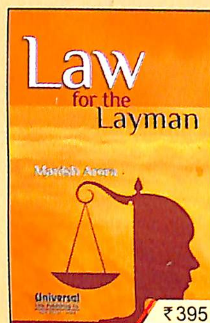
Other Books of your Interest

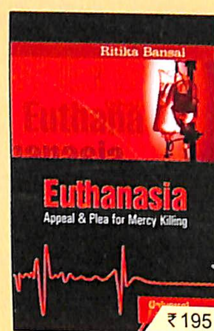


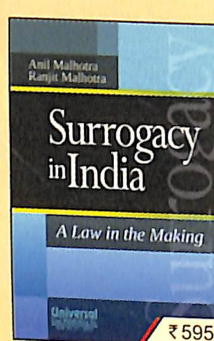


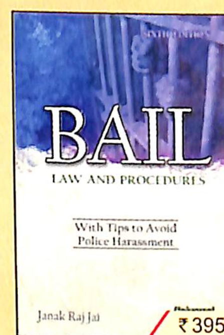


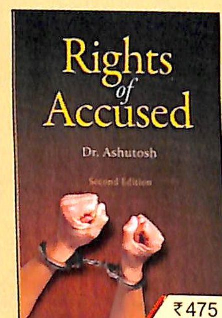


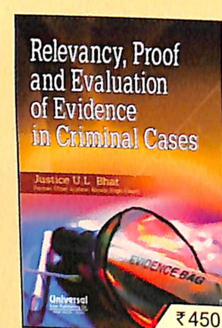


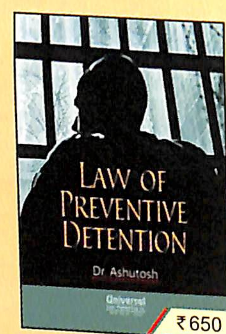


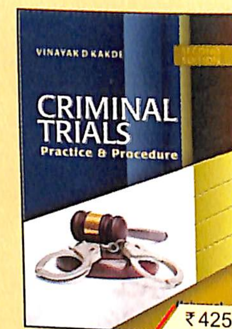


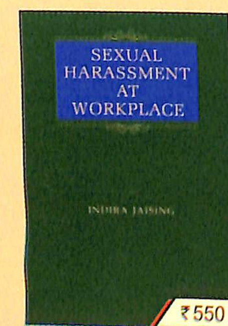


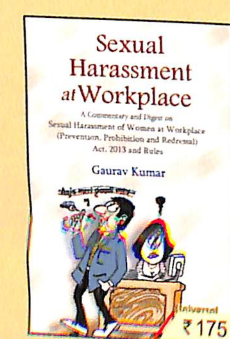


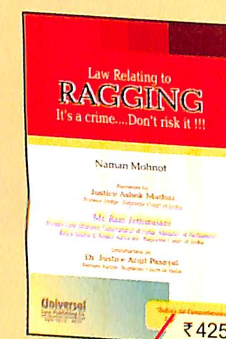


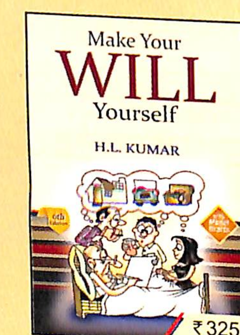












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